

CONFIRMATION HEARING ON THE NOMINATIONS
OF LARRY D. THOMPSON TO BE DEPUTY
ATTORNEY GENERAL AND THEODORE B.
OLSON TO BE SOLICITOR GENERAL OF THE
UNITED STATES

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

APRIL 5, 2001

Serial No. J-107-13

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

77-278 TXT

WASHINGTON : 2002

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2250 Mail: Stop SSOP, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

ORRIN G. HATCH, Utah, *Chairman*

STROM THURMOND, South Carolina

CHARLES E. GRASSLEY, Iowa

ARLEN SPECTER, Pennsylvania

JON KYL, Arizona

MIKE DEWINE, Ohio

JEFF SESSIONS, Alabama

SAM BROWNBACK, Kansas

MITCH McCONNELL, Kentucky

PATRICK J. LEAHY, Vermont

EDWARD M. KENNEDY, Massachusetts

JOSEPH R. BIDEN, JR., Delaware

HERBERT KOHL, Wisconsin

DIANNE FEINSTEIN, California

RUSSELL D. FEINGOLD, Wisconsin

CHARLES E. SCHUMER, New York

RICHARD J. DURBIN, Illinois

MARIA CANTWELL, Washington

SHARON PROST, *Chief Counsel*

MAKAN DELRAHIM, *Staff Director*

BRUCE COHEN, *Minority Chief Counsel and Staff Director*

CONTENTS

STATEMENTS OF COMMITTEE MEMBERS

	Page
Hatch, Hon. Orrin G., a U.S. Senator from the State of Utah	1
Leahy, Hon. Patrick J., a U.S. Senator from the State of Vermont	3

PRESENTERS

Cleland, Hon. Max, a U.S. Senator from the State of Georgia presenting Larry D. Thompson, Nominee to be Deputy Attorney General	11
Miller, Hon. Zell, a U.S. Senator from the State of Georgia presenting Larry D. Thompson, Nominee to be Deputy Attorney General	12
Nickles, Hon. Don, a U.S. Senator from the State of Oklahoma presenting Theodore B. Olson, Nominee to be Solicitor General of the United States	10
Warner, Hon. John W., a U.S. Senator from the State of Virginia presenting Theodore B. Olson, Nominee to be Solicitor General of the United States	8

STATEMENTS OF THE NOMINEES

Olson, Theodore B., Nominee to be Solicitor General of the United States	60
Questionnaire	62
Thompson, Larry D., Nominee to be Deputy Attorney General	15
Questionnaire	19

QUESTIONS AND ANSWERS

Written questions for Theodore B. Olson submitted by Senator Durbin	174
Written questions for Larry D. Thompson submitted by Senator Durbin	176
Responses of Theodore B. Olson to questions submitted by Senator Leahy	177

**CONFIRMATION HEARING ON THE NOMINA-
TIONS OF LARRY D. THOMPSON TO BE DEP-
UTY ATTORNEY GENERAL AND THEODORE
B. OLSON TO BE SOLICITOR GENERAL OF
THE UNITED STATES**

THURSDAY, APRIL 5, 2001

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 10:27 a.m., in room SC-5, The Capitol, Hon. Orrin G. Hatch, Chairman of the Committee, presiding.

Present: Senators Hatch, Specter, Kyl, DeWine, Sessions, McConnell, Leahy, Kennedy, Feinstein, Feingold, Schumer, Durbin, and Cantwell.

**OPENING STATEMENT OF HON. ORRIN G. HATCH, A U.S.
SENATOR FROM THE STATE OF UTAH**

Chairman HATCH. Good morning. Welcome to the nomination hearing before the Senate Judiciary Committee. Today we are going to consider the nomination of Larry D. Thompson to be the Deputy Attorney General and of Theodore B. Olson to be Solicitor General of the United States.

Before we begin, I would like to congratulate both nominees on being selected by President Bush for these important positions. It is a pleasure to have two nominees before this Committee who have distinguished themselves with hard work and great intellect, and I am confident that they will do great service to the Department of Justice and the citizens of this country upon their confirmation.

Certainly, the position of Deputy Attorney General is vital to the Department of Justice and to the country. The Deputy Attorney General serves as the No. 2 person at the Justice Department and acts as the Justice Department's chief operating officer, handling much of its day-to-day administration. The Deputy must be a person of unquestioned competence and integrity who can exercise good judgment and provide objective legal advice to the Attorney General.

Mr. Thompson meets all of these requirements. He has had an impressive and varied career as a lawyer, including working as in-house corporate counsel at Monsanto, as a partner at the prestigious law firm of King and Spalding, as the United States Attorney for the Northern District of Georgia, as an independent coun-

sel, and as an adjunct professor of law at both Mercer University and the University of Georgia Law School.

The diverse nature of his employment is surpassed by the even wider variety of legal issues that he has mastered. Most recently, Mr. Thompson has specialized in white-collar criminal defense, complex civil litigation, internal corporate investigations, RICO litigation, and False Claims Act cases. He has also handled a variety of civil matters and has both prosecuted and defended people accused of criminal activity. He has been involved in antitrust, civil rights, and intellectual property issues. This experience, combined with an excellent character, convinces me that Mr. Thompson, once confirmed, will prove to be one of the most qualified Deputy Attorney Generals to serve this country.

So it is a pleasure to welcome you, Mr. Thompson, to our Committee this morning.

Our second nominee this morning is Ted Olson.

The Solicitor General is one of the most coveted positions in the Federal Government. Numerous anecdotes of accomplished lawyers attest to this fact. For instance, when appointed to the Supreme Court, Justice Murphy asked whether any other Justice had held as many governmental positions as he had. The clerk responded, "Well, there was Taft...He was Solicitor General, he was Circuit Court Judge, he was president of the Philippines Commission, he was Secretary of War, he was President of the United States, and, of course, he was Chief Justice." Dejected, Justice Murphy asked, "He was Solicitor General, too?"

[Laughter.]

Chairman HATCH. The Solicitor General represents the interests of the United States in litigation before the Supreme Court and the Federal appellate courts.

By statute, the Solicitor General takes his orders from the Attorney General. The position was created in 1870 to assist the Attorney General with the duties of litigating before the Supreme Court.

One of his main tasks is to defend Federal statutes and regulations from challenges in the Federal courts.

Before the Supreme Court, he serves more than just an advocate's role. He is also a kind of trusted advisor and is sometimes referred to as the "tenth justice" or as the "thirty-fifth law clerk," because of his important institutional role.

[Laughter.]

Chairman HATCH. I want to make sure you are always humble. The Supreme Court relies on the Solicitor General to provide an accurate explanation of the current state of the law.

Mr. Olson, who has been nominated for the position of Solicitor General, should be no stranger to this role. He has argued before the Supreme Court 15 times and is regarded by both liberals and conservatives as one of the best appellate lawyers in our country. The National Law Journal has twice recognized him as one of America's 100 Most Influential Lawyers and has called him a "member of the inner circle of the Supreme Court bar."

Mr. Olson has an extremely distinguished record in private practice and also as the head of the Office of Legal Counsel in the Department of Justice. His knowledge and expertise extend over the whole range of constitutional and statutory issues. He has the in-

tellekt and experience to represent the United States well on the wide variety of issues that will face the administration.

Let me just say that I have the utmost confidence in Mr. Olson's ability to maintain his balance.

With Attorney General John Ashcroft at the helm, Larry Thompson as his Deputy, and Ted Olson as the Solicitor General, I believe that we have the beginnings of one of the best and most qualified Departments of Justice this country has seen.

So, Ted, we are delighted to welcome you and your family here this morning.

Let me turn to the distinguished ranking Democratic member for his opening remarks, and then we will turn to our witnesses for theirs.

**STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR
FROM THE STATE OF VERMONT**

Senator LEAHY. Thank you, Mr. Chairman.

The positions of Deputy Attorney General and Solicitor General are extremely important, and they are very sensitive leadership positions at the Department of Justice, as attested to by the fact that we have four extraordinary Senators here prepared to testify, one even more extraordinary than the others.

[Laughter.]

Chairman HATCH. We know he is speaking of himself.

Senator LEAHY. Coming from a Gaelic heritage, I appreciate that. I applaud my Senator from when I am away from home. And somebody reading this record 50 years from now, if anybody is so bored as to do that, will wonder what the heck we were talking about.

I hope the hearings of these nominations will clear the air on a number of issues, especially because they are so important.

The position of Deputy Attorney General is a crucial one. The Deputy is No. 2 in command and plays a key role as a top advisor to the Attorney General. Actually, the position was firmly established back in the Eisenhower administration almost 50 years ago. It was just after the Attorney General and President Eisenhower had established the arrangement by which the American Bar Association began providing peer review to the President of possible judicial nominees.

Now, while a number of our longstanding traditions are being changed by the current administration, as they have a right to, the position of the Deputy Attorney General appears to be one that continues, and I am happy to see that. Former Deputies include William Rogers and Byron White, Nicholas Katzenbach and Warren Christopher, Harold Tyler, Jamie Gorelick and Eric Holder. The Deputy has traditionally assumed responsibility for the day-to-day operations of the Department. The Deputy often has direct oversight of a number of divisions and units within the Department, including the FBI and those with criminal jurisdiction. And the Deputy position may assume even greater significance in this administration since we have not read of any designation of an Associate Attorney General with whom the Deputy might share those leadership responsibilities. Perhaps there will be.

This is a critical juncture for the Department and for our Federal law enforcement efforts. I am concerned with reports that the ad-

ministration intends to cut Justice Department funding significantly. The early reports were that those cuts would amount to more than \$1 billion annually, and I want to explore what cuts the President and Attorney General Ashcroft will make in law enforcement to absorb those.

I know that Mr. Thompson served previously as a United States attorney, and I am sure that he appreciates, as those of us who have had the opportunity to serve as prosecutors understand, what it would mean to cut positions in our U.S. Attorney's Offices and how unwise that would be.

I am concerned that the Senate is being called upon this week to vote on the Federal budget without having seen a detailed submission of where the Bush administration intends to make its cuts in law enforcement. I for one would hate to see large cuts in our Federal assistance to State and local law enforcement. Those programs to help acquire bulletproof vests or to reduce DNA backlogs or to encourage modern communications, provide modern crime labs, and place cops on the beat have helped bring down our crime.

In fact, under Attorney General Reno, and due in part to her emphasis on a coordinated effort with State and local law enforcement, with strong support from the Congress, crime rates fell in each of the past 8 years. I don't know a time in my adult life that the crime rates have fallen in this country for 8 years in a row. Violent crimes, including murder and rape, have been reduced to the lowest levels in decades. So we should continue—if we have something that is working, we ought to continue with it.

Now, the President said he intends to cut Federal assistance to State and local law enforcement by 30 percent. We do want to look at that. With school shootings continuing to occur across the country and the use of heroin, methamphetamine, and other dangerous drugs not only in my State but across the country, in rural and urban settings, with all that it is not the time to redirect \$1.5 billion away from Federal assistance to State and local law enforcement.

Senator Hatch and I began this year by cosponsoring with other Senators a bill to focus increased effort and resources in the battle against illegal drug use. But our bill will require substantial commitments to do it, not by cutting billions out of our anti-drug effort but by adding money.

I was very impressed by Mr. Thompson when we met and spoke informally earlier this week, not only for his own obvious brilliance as an attorney and his background, but I know that when things are working well, there is a lot of contact between this Committee on both sides of the aisle and the Department. So we need a candid and responsive relationship, and I look forward to that.

In fact, usually the Deputy Attorney General has warranted its own hearing. Indeed, the hearing on the nomination of former President Bush's last Deputy Attorney General included a number of public witnesses in addition to testimony from the nominee. Now, the Chairman has said that we will have the hearing of this and the Solicitor General together. That is his prerogative.

The Solicitor General fills a unique position in our Government. He is responsible for the integrity of our laws. He is not another legal advocate out to advance the narrow interests of a client or

merely another advocate of the President's policies. He is much more than that. The Solicitor General must use his or her legal skills and judgments for higher purposes, and sometimes even called the "tenth justice" of the Supreme Court.

We have reviewed nominations to the position of Solicitor General over the years, seeking the highest levels of independence and integrity, as well as legal skills. Think of the people we have had. The Chairman mentioned William Howard Taft. We had Benjamin Bristow, Charles Evans Hughes, Robert Jackson, Archibald Cox, Thurgood Marshall, and Erwin Griswold.

I mentioned last month when the President withdrew a number of judicial nominations that had been pending before this Committee over the last several years: Judge Helene White, Judge James Wynn, Bonnie Campbell, and many others. I regret he also withdrew the nomination of Kathleen McCree Lewis. Even though she had been before this Committee without action for a year and a half, I thought the name would be very familiar to us because she is the daughter of one of our most distinguished Solicitors General and Federal Judges, Wade McCree, and is herself a highly respected appellate lawyer at the Detroit firm of Dykema Gossett, strongly supported by the Senators from her State. And I think had we ever gotten around to having a hearing on her and voting on her, she would have been confirmed. She would have been the first African-American woman ever to serve on the Sixth Circuit.

Now, I know Mr. Olson. I had a good talk with him earlier this week, and I appreciate the amount of time and his courtesy coming by and affording me whatever time I might want. I had the opportunity, along with Senator Hatch to attend the oral arguments before the U.S. Supreme Court last December and saw how well he handled on behalf of his client, in this case now President of the United States.

He has spoken in a number of other areas. He argued on behalf of a number of other causes, such as ending affirmative action, defending VMI's policy of excluding women, and we will probably talk about that. But I always felt that he was there to speak for a client on a particular case.

Now, what I am not going to do, as, unfortunately, some on this Committee have done during the past 6 years, is hold up a person because of his clients. I think every client has a right to have the best attorney possible, and Mr. Olson is without doubt one of the best.

Now, Mr. Olson was very critical of the last administration for what he saw to be the exercise of political influence over the Department of Justice. He was extremely critical of Attorney General Reno for failing, in his view, to maintain the standard of independence and non-partisanship. He will, of course, be asked whether he will disregard partisanship, especially a Solicitor General.

Now, I know the Chairman wants to expedite this hearing. He noticed it last week before all the required reports had been received on both nominees. I think it is a rather unprecedented step to put them together, but that is his right. And no matter what criticism there might be of it, I would point out that it is his absolute right to speed this through in this way, even if it is not our normal procedure.

With that, to help you speed it up, Mr. Chairman, I will put the rest of my statement in the record.

Chairman HATCH. I am so pleased with that.

Senator LEAHY. I am sure you are.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

The positions of Deputy Attorney General and Solicitor General are extremely important and sensitive leadership positions at the Department of Justice. I hope that today's hearing on the nominations to fill these important posts will be both full and fair.

The position of Deputy Attorney General is a crucial one. The Deputy is number two in command and plays a key role as a top advisor to the Attorney General. The position was firmly established in the Eisenhower Administration almost 50 years ago—just after the Attorney General and President Eisenhower had established the arrangement by which the American Bar Association began providing peer review to the President of possible judicial nominees. While a number of our longstanding traditions are being upset by the current Administration, the position of the Deputy Attorney General appears to be one that continues. Former Deputies include William Rogers and Byron White, Nicholas Katzenbach and Warren Christopher, Harold Tyler, Jamie Gorelick and Eric Holder. The Deputy has traditionally assumed responsibility for the day-to-day operations of the Department. The Deputy often has direct oversight of a number of divisions and units within the Department, including the FBI and those with criminal jurisdiction. The Deputy position may assume even greater significance in this Administration since we have not read of any designation of an Associate Attorney General with whom the Deputy might share those leadership responsibilities.

This is a critical juncture for the Department and for our federal law enforcement efforts. I remain concerned with reports that the Bush Administration intends to cut Justice Department funding significantly. The early reports were that those cuts would amount to more than \$1,000,000,000 annually. I want to explore where President Bush and Attorney General Ashcroft intend to absorb such massive cuts.

I know that Mr. Thompson served previously as a United States Attorney. I am sure that he appreciates, as those of us who served as local prosecutors understand, what it would mean to cut positions in our United States Attorneys offices and how unwise that would be.

I am concerned that the Senate is being called upon this week to vote on the federal budget without having seen a detailed submission of where the Bush Administration intends to make its cuts in law enforcement. I, for one, would hate to see cuts in our federal assistance to State and local law enforcement. Those programs to help acquire bulletproof vests, reduce DNA backlogs, encourage modern communications, provide modern crime labs, and place cops on the beat have been so helpful to our crime control efforts.

Under Attorney General Reno, and due in part to her emphasis on a coordinated effort with State and local law enforcement, crime rates fell in each of the past 8 years. Violent crimes, including murder and rape, have been reduced to the lowest levels in decades, since before the Reagan and Bush Administrations. We need to redouble our efforts, not cut them short or leave them short of funds. When the Bush budget highlights in his "Blueprint for New Beginnings" says that the President intends to cut federal assistance to State and local law enforcement by 30%, by "redirecting" over \$1,500,000,000, that troubles me. With school shootings continuing to occur across the country and the use of heroin, methamphetamine and other dangerous drugs in Vermont and across the country in rural and urban settings, now is not the time to be redirecting \$1,500,000,000 away from federal assistance to State and local law enforcement. Now is not the time to be pulling back from the strong national commitment we should be making to continue to assist those on the front lines in the fight against crime and battle over illegal drug use.

Senator Hatch and I began this year by cosponsoring with other Senators a bill to focus increased effort and resources in the battle against illegal drug use. Our bill, the Drug Abuse Education, Prevention and Treatment Act of 2001, will require a significant commitment of additional resources to this effort. If we are finally ready to make the type of commitment to drug abuse education, prevention and treatment that we need in order to make a difference, that will require increasing federal funding of our anti-drug efforts by over \$1,000,000,000 during the next three

years, not cutting law enforcement funding by more than \$1,000,000,000 each of the next four years.

I was impressed by Larry Thompson when we met and spoke informally earlier this week. When we are working together well, the contact between this Committee and the Department is so frequent and important that we will need a candid and responsive relationship with the Deputy. I enjoyed our brief visit earlier this week and look forward to getting to know Mr. Thompson better through the course of these proceedings.

A nomination to as significant a position as the Deputy Attorney General has traditionally been treated by this Committee as worthy of its own hearing. Indeed, the hearing on the nomination of former President Bush's last Deputy Attorney General included a number of public witnesses in addition to testimony from the nominee. Instead of proceeding along that model, Senator Hatch has ordered this matter to be interwoven with the nominee to be Solicitor General, without any opportunity for witnesses other than the nominees to testify. I recall that Chairman Thurmond heard witnesses in connection with the nominations of both Rex Lee and Charles Fried to be Solicitor General during the Reagan Administration. Having public testimony in connection with nominations can be a helpful aspect to this process and useful to the Senate as it performs its constitutional responsibilities in considering whether to confirm presidential nominations.

The Solicitor General fills a unique position in our Government. The Solicitor General is responsible for the integrity of our laws. The Solicitor General is not merely another legal advocate whose mission is to advance the narrow interests of a client, or merely another advocate of his President's policies. Rather, the Solicitor General is much more than that. The Solicitor General must use his or her legal skills and judgment to higher purposes. For this reason the Solicitor General has often been called the 10th Justice of the Supreme Court.

On this Committee, Republicans and Democrats have reviewed nominations to the position of Solicitor General seeking the highest levels of independence and integrity, as well as legal skills. He or she must argue with intellectual honesty before the Supreme Court and represent the interests of the Government and the American people for the long term, and not just with an eye to short-term political gain. It is our obligation here on this Committee to help the Senate determine whether a nominee understands and is up to this extraordinary role. From Benjamin Bristow in 1870, to William Howard Taft and Charles Evans Hughes, Jr., from Robert Jackson to Archibald Cox, Thurgood Marshall and Erwin Griswold, we have had some extraordinary people serve this country as our Solicitors General.

Part of my deep regret last month when President Bush chose to withdraw the nominations of the judicial nominations that had been pending before this Committee over the last several years without action was that, along with the nominations of Roger Gregory and Judge Helene White and Judge James A. Wynn, Jr. and Bonnie Campbell and so many others, President Bush chose to withdraw the nomination of Kathleen McCree Lewis.

That name is familiar not only because her nomination was before this Committee without action for more than one and a half years, from September 16, 1999 until withdrawn by President Bush on March 19, 2001. That name is also familiar because Ms. Lewis is the daughter of one of our most distinguished Solicitors General and federal judges, Wade McCree. Ms. Lewis is herself a highly-respected appellate lawyer at the Detroit firm of Dykema Gossett. She had served as a member of the Detroit Civil Service Commission and of the Detroit Civic Center Commission. She was strongly supported by both Senator Levin and Senator Stabenow for a seat on the United States Court of Appeals for the Sixth Circuit. Had this Committee held a hearing on her nomination and had the Senate considered her, I have no doubt that she would have been confirmed. She would have been the first African American woman ever to serve on the Sixth Circuit. Although a consensus candidate, she was denied that opportunity to serve.

I had a brief opportunity to chat with Mr. Olson earlier this week. I am familiar with his work as a part of the Reagan Justice Department. In addition, I had the opportunity along with Senator Hatch, to attend the oral arguments before the United States Supreme Court last December and witnessed his aggressive representation of George W. Bush in that historic presidential selection case.

His role in that case and on behalf of a number of other causes, such as ending affirmative action and defending VMI's policy of excluding women, are matters that I anticipate will be covered in the course of these hearings. Unlike the litmus test that has been used by anonymous Republicans over the last several years to disqualify the choices of a Democratic President, I will not oppose this nomination merely because of Mr. Olson's clients and his clients' activities. I understand the role of an advocate in our legal system.

What adds controversy to this nomination are Mr. Olson's activities and outspoken partisanship over the last several years. A key question that this hearing will raise is whether Mr. Olson would put his partisanship and activist politics aside in the formulation of the Government's litigation positions. Mr. Olson was very critical of the last Administration for what he saw to be the exercise of political influence over the Department of Justice, and he was extremely critical of Attorney General Reno for failing, in his view, to maintain a standard of independence and non-partisanship. Given his rhetoric over the last several years, Mr. Olson is now confronted with the question whether he will disregard partisanship and narrow political ideology in carrying out the important responsibilities of the Solicitor General.

I know that Senator Hatch is expediting this hearing, going so far as to notice it last week before all the required reports had even been received on both nominees. He is taking the unprecedented step of combining both of these critical nominations in a single panel in a single hearing on a single day. Indeed, he has chosen to proceed today knowing that for some time the Republican leadership has planned to devote today to Senate consideration of this year's budget resolution. So, in addition to our participation today in the work of the Senate as it considers the budgetary framework for the Federal Government, we have a doubly full hearing agenda as we begin the process of considering these critical nominations.

Moreover, this has already been the Committee's busiest week of the session having already held more hearings on Tuesday and Wednesday of this week than the Committee held in all of February or all of March. This will be our fifth hearing this week. Finally, I should note for the record that we are not proceeding in our normal Judiciary Committee hearing room or in one of the other larger hearing rooms that we sometimes employ. Instead, we are proceeding for the first time in a basement room of the Capitol with less accessibility and availability to the public.

In spite of all these circumstances, we will do the best that we can to fulfil our responsibilities. I want to commend the Members of the Committee who are adjusting their schedules to participate in the hearing today. I will do all that I can to accommodate them and all Members of the Committee to ensure that they have had the opportunity to review these nominations and question the nominees.

Chairman HATCH. We have four distinguished witnesses here this morning before the two nominees, and because of his problems that are many-fold right now, we are going to turn to our Scottish warlord here.

[Laughter.]

Senator LEAHY. Didn't they make a movie about him? He does have that Mel Gibson appearance, except he looks younger and more virile.

[Laughter.]

Senator WARNER. We should have brought Sean Connery in. He is right upstairs waiting, and he is going to escort us down.

Senator LEAHY. Well, you have a lot more hair.

Chairman HATCH. Actually, John, you look better in a skirt than Trent Lott.

[Laughter.]

Senator LEAHY. I am going to leave that one alone.

Senator WARNER. There is a cold draft in this room.

[Laughter.]

Senator WARNER. Perhaps that could be expunged from the record.

[Laughter.]

PRESENTATION OF THEODORE B. OLSON, NOMINEE TO BE SOLICITOR GENERAL OF THE UNITED STATES, BY HON. JOHN W. WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. I think since you have brought up the fact that I am here in my outfit today, probably the first time in 23 years I have been privileged to serve in the Senate I didn't have a dark blue suit and a red tie on, but I do so because April 6, 1320, the

Scots declared their declaration of independence. And it is interesting—I am reading from a Senate resolution—that the American Declaration of Independence was modeled on that inspirational document. Half of the signers of the Declaration of Independence were of Scottish origin. The Governors of nine of the 13 original States were of Scottish ancestry, as have been many of our Presidents. So there is a deep respect we have for our heritage.

Now, I have got to go upstairs—

Senator LEAHY. Mr. Chairman, if the Senator would yield on that point, I am glad you brought up April 6, 1320, because there is only one member of this Committee who was around at that time.

[Laughter.]

Senator WARNER. He will be here momentarily.

Senator LEAHY. He will be.

[Laughter.]

Senator LEAHY. Casting the deciding vote.

Senator WARNER. If I might proceed, thank you, gentlemen and ladies. As you all know, the Solicitor General's office supervises and conducts all Government litigation in the United States Supreme Court, and I am honored to be here on behalf of Theodore Olson today, a resident of my State. The Solicitor General helps develop the Government's positions on cases and personally argues many of the most significant cases before the Supreme Court. Given these great responsibilities, it is no surprise that the Solicitor General is the only officer of the United States required by statute to be "learned in the law."

His background is impressive. He received his law degree in 1965 from the university of California at Berkeley where he was a member of the California Law Review and graduated Order of the Coif. Upon graduation, he joined the firm of Gibson, Dunn and Crutcher in 1965, becoming a partner in 1972. During this time, Mr. Olson had a general trial and appellate practice as well as a constitutional law practice.

In 1981, he was appointed by President Reagan to serve as Assistant Attorney General, Office of Legal Counsel of the United States Department of Justice. During his 4 years in this position, he provided counsel to the President, the Attorney General, and heads of the executive branch departments.

After serving in the Reagan administration, Mr. Olson returned to private practice. He has argued numerous cases before the Supreme Court, including one that we are all familiar with related to the past election and the Florida results. His vast experience in litigating before the Supreme Court will serve him well as Solicitor General.

Mr. Chairman, I say without reservation that this is a well-experienced individual, and I am confident he will serve in this position with honor, with integrity, and with distinction.

I ask that the balance of my remarks be placed in the record.

[The prepared statement of Senator Warner follows:]

STATEMENT OF HON. JOHN WARNER, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Chairman Hatch, and my other distinguished colleagues on the Senate's Judiciary Committee, I am pleased to support the nomination of a Virginian, Theodore B. Olson, to serve as the Solicitor General of the United States.

As you all know, the Solicitor General's Office supervises and conducts all government litigation in the United States Supreme Court. The Solicitor General helps develop the government's positions on cases and personally argues many of the most significant cases before the Supreme Court. Given these great responsibilities, it is no surprise that the Solicitor General is the only officer of the United States required by statute to be "learned in the law."

Mr. Olson's background in the law is impressive. He received his law degree in 1965 from the University of California at Berkeley where he was a member of the *California Law Review* and graduated Order of the Coif. Upon graduation, Mr. Olson joined the firm of Gibson, Dunn, & Crutcher in 1965, becoming a partner in 1972. During this time, Mr. Olson had a general trial and appellate practice as well as a constitutional law practice.

In 1981, Mr. Olson was appointed by President Reagan to serve as Assistant Attorney General, Office of Legal Counsel in the United States Department of Justice. During his four years in this position, Mr. Olson provided counsel to the President, Attorney General, and heads of the Executive Branch Departments.

After serving in the Reagan administration, Mr. Olson returned to private practice. He has argued numerous cases before the Supreme Court, including one that we are all familiar with related to this past election and the Florida election results. His vast experience in litigating before the Supreme Court will serve him well as Solicitor General.

Mr. Chairman, based on this extensive experience in the law, it goes without saying that Mr. Olson is "learned in the law." Mr. Olson is obviously extremely well-qualified to serve as our next Solicitor General, and I am confident that he will serve in this position with honor, integrity, and distinction.

Again, I am pleased to indicate my support for Mr. Olson. I look forward to the Committee reporting his nomination favorably and for a confirmation vote before the full Senate.

Chairman HATCH. Thank you, Senator. We appreciate your remarks.

Senator WARNER. I thank the indulgence of all members. If anyone cares to join us on the steps of the Capitol, where about several hundreds Scots similarly dressed will be there, you are welcome.

Chairman HATCH. Thank you, John. We appreciate it.

Senator LEAHY. Thanks, John.

Chairman HATCH. We will follow seniority, so we turn to Senator Nickles next, and then we will go to Senator Cleland and then Senator Miller.

PRESENTATION OF THEODORE B. OLSON, NOMINEE TO BE SOLICITOR GENERAL OF THE UNITED STATES, BY HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Mr. Chairman, Senator Leahy, and members of the committee, thank you very much and I will be very brief.

One, I wish to compliment the President on his selection of Larry Thompson as Deputy Attorney General and Ted Olson to be Solicitor General. I think both are outstanding individuals. Both will serve not only the Attorney General but our country very well, and they will do an outstanding job.

I do regret to say that Mr. Olson is not of Scottish descent. I find that to be his only lack of qualification. Obviously, he is a pre-eminent attorney among a handful that is eminently qualified to be Solicitor General. He is a lawyer with the qualifications Senator Warner mentioned: his law degree from the university of California, a partner in a very prestigious law firm, Gibson, Dunn and Crutcher, for 30-some years. He served as Assistant Attorney General of the United States in 1981-84, offering advice to President Reagan and then Attorney General William French Smith, in addition to other executive branch departments.

He has held numerous legal positions both in the American Bar Association, Federalist Society, and others. The National Law Journal recognized him as one of America's top 100 attorneys. They have done that year after year, and deservedly so.

He has argued cases before Federal level and State level. He has been on several sides on legal issues. He recently, as mentioned by both Senator Leahy and Senator Warner, argued in a very famous case, *Bush v. Gore*. And regardless of whatever side of that issue you are on, you had to be impressed with his talent and the fact that he was able to put together that case, argued a very complicated case under enormous pressure, both in time and also on the importance of the issue.

He has argued cases on both sides of the courtroom. He has defended the Government and he counseled the President and Attorney General on the limits of Government power. He has also defended private interests against the Government. So when he is Solicitor General and arguing the Government's position in court, he understands that there are both limits to Government power against individuals and limits of executive branch authority against the legislature and courts. I believe he will be a real credit to this administration and to his profession, and I believe our country is very fortunate to have him serve in this capacity. I happen to agree with Senator Leahy. He is one of our country's best attorneys, eminently qualified, and I think he will be an outstanding Solicitor General for our country.

So, Mr. Chairman and members, thank you very much for the opportunity to introduce Ted Olson. I think he will do an outstanding job.

Chairman HATCH. Well, thank you, our Assistant Majority Leader. Your testimony means a lot to this committee. We appreciate your being here, we know you are busy. We will let you go.

Senator Cleland, we are very honored to have you and Senator Miller here, and we look forward to hearing your testimony.

PRESENTATION OF LARRY D. THOMPSON, NOMINEE TO BE DEPUTY ATTORNEY GENERAL, BY HON. MAX CLELAND, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator CLELAND. Thank you very much, Mr. Chairman. It is an honor to be here with my colleague, Senator Zell Miller, and we are honored today to speak and appear and recommend to the Committee with our total support Attorney Larry Thompson from Georgia.

I would like to acknowledge his lovely wife, Brenda, who is here, and thank them both for their loyalty to each other and loyalty to the law.

It is my pleasure to recommend him for the position of Deputy Attorney General. He is an experienced litigator and uniquely qualified to work on behalf of all Americans as Deputy Attorney General. He graduated *cum laude* from Culver-Stockton College in 1967. I admire anybody who graduates *cum laude* or *magna cum laude*. I graduated "lordie, how come?"

[Laughter.]

Senator CLELAND. He serves as a member of the Board of Trustees there at Culver-Stockton. He received his master's degree from Michigan State in 1969 and his law degree from the University of

Michigan in 1974. He joined King and Spalding, a law firm in Atlanta, in 1977 and practiced in the Antitrust and Litigation departments until 1982. From 1982 until 1986, he served as the U.S. Attorney for the Northern District of Georgia and did an outstanding job. As U.S. attorney, he directed the Southeastern Organized Crime Drug Enforcement Task Force and served on the Attorney General's Economic Crime Council.

After returning to King and Spalding in 1986 as a partner, he resumed his practice in civil and criminal litigation. In July 1995, Mr. Thompson was named Independent Counsel for the Department of Housing and Urban Development investigation by the Special Panel of the U.S. Circuit Court Judges appointed by the Supreme Court. He is a member of the Committee on Lawyers' Qualifications and Conduct of the Eleventh Circuit, U.S. Court of Appeals. He is also an elected Fellow of the American Board of Criminal Lawyers. In addition, Larry Thompson teaches a weekly seminar on corporate crime at the University of Georgia School of Law.

Paul Kurtz, the associate dean at the University of Georgia School of Law stated that "he is delighted that Larry has been nominated." In addition, Mr. Kurtz said that Larry is "incredibly bright, incredibly hard-working, and very gifted." A wonderful description. Larry is well respected by his peers and his students and cares very much about representing all Americans as a member of the Justice Department. He is an outstanding attorney and will be an excellent Deputy Attorney General.

He is a wonderful person, as evidenced by his great character and judgment; and, therefore, he has my full and unconditional support. I hope he will be approved by the Committee and confirmed by the full Senate as soon as possible.

Thank you very much, Mr. Chairman.

Chairman HATCH. Thank you so much, Senator Cleland.

Senator Miller?

PRESENTATION OF LARRY D. THOMPSON, NOMINEE TO BE DEPUTY ATTORNEY GENERAL, BY HON. ZELL MILLER, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator MILLER. Mr. Chairman and members of this committee, I am honored and pleased to be here today with my colleague, Senator Cleland, to present Larry D. Thompson to this esteemed committee. And I want to congratulate my longtime friend and fellow Georgian on this nomination.

You have heard about his credentials. Let me tell you a little bit about this man that I know so well.

Clearly—I cannot say this more clearly—President George Bush simply could not have made a better choice in nominating Larry Thompson as the next Deputy Attorney General for the United States. This is a man of impeccable credentials who will serve the Department of Justice and this Nation very, very well.

I have had the pleasure to know Larry Thompson for many years, as I say. He is the consummate professional: quiet yet strong, a legal scholar who exercises enormous common sense, a man who will put principle ahead of politics every time. He is a man of great substance and little ego. He is not one to grandstand or grab headlines.

Mr. Thompson would bring to the Department of Justice a solid record of experience. You have heard about it already from the Chairman and from Senator Cleland. I will add just a little.

He was the kind of U.S. attorney who got in the trenches and tried cases himself on occasion, working as hard or, as they would tell you, harder than his assistant U.S. attorneys.

Those who worked under Larry Thompson were struck by the enormous respect he always had for the rights of defendants. He refused to publicize someone's misfortunes when they were indicted. And he insisted on waiting until after a conviction before he would claim victory.

From 1995 to 1999, Mr. Thompson served as independent counsel in a corruption probe at the Department of Housing and Urban Development. He earned praise from his peers for approaching this highly political, highly volatile case with the measured, unbiased, and apolitical approach for which he is so well known.

Mr. Thompson, as the Chairman has mentioned, has practiced law at the prestigious Atlanta law firm of King and Spalding since 1977. He is a senior partner in the highly successful Special Matters and Government Investigations practice formed by Griffin Bell, who was appointed Federal judge by President Kennedy and Attorney General by President Carter.

As I said at the beginning, President Bush simply could not have made a better choice as Deputy Attorney General. Larry Thompson brings a wealth of experience as a tough prosecutor, an adept litigator, a respected scholar, and a skilled manager.

More important than that, Larry Thompson comes with no agenda. He will base every decision on what is right, not what is popular or politically expedient. He will bring to the Justice Department the same wisdom, the same thoughtfulness, and the same steady demeanor upon which he has built his stellar career.

I am honored and I am very proud—in fact, this is the most rewarding experience I have had so far as a United States Senator—to present Larry Thompson and to recommend him strongly for confirmation as the next Deputy Attorney General.

Thank you, Mr. Chairman.

[The prepared statement of Senator Miller follows:]

STATEMENT OF HON. ZELL MILLER, A U.S. SENATOR FROM THE STATE OF GEORGIA

Mr. Chairman, Members of the Committee, Senator Cleland, I am honored to be here today to present Larry D. Thompson to this Esteemed Committee. And I want to congratulate my longtime fiend and fellow Georgian on his nomination.

I cannot say it more clearly than this:

President Bush could not have made a better choice in nominating Larry Thompson as the next Deputy Attorney General of the United States.

This is a man of impeccable credentials who will serve the Department of Justice and this nation very well.

I have had the pleasure to know Larry Thompson for several years. He is the consummate professional: quiet yet strong, a legal scholar who exercises enormous common sense, a man who will put principle ahead of politics every time. He is a man of great substance and little ego. He is not one to grandstand or grab headlines.

Mr. Thompson would bring to the Department of Justice a solid record of experience that includes four years as the U.S. Attorney for the Northern District of Georgia, from 1982 to 1986. In that job, Mr. Thompson directed the Southeastern Organized Crime Drug enforcement Task Force and served on the Attorney General's Economic Crime Council.

He was the kind of U.S. Attorney who got in the trenches and tried cases himself on occasion, working as hard or even longer hours than his assistant U.S. attorneys.

Those who worked under Larry Thompson were struck by the enormous respect he paid to the rights of defendants. He refused to publicize someone's misfortunes when they were indicted. He insisted on waiting until after a conviction before he would claim victory.

From 1995 to 1999, Mr. Thompson served as independent counsel in a corruption probe at the Department of Housing and Urban Development. He earned praise from his peers for approaching this highly political, highly volatile case with the measured, unbiased and apolitical approach for which he is so well known.

As Governor of Georgia, I tried over and over again to persuade Mr. Thompson to accept a position in state government. I knew he would be a great asset to my administration.

In 1996, he finally accepted, taking a seat on the state Board of Education. As many of you know, education is my passion, so I was delighted to have someone of Larry Thompson's stature on the board that oversees our public schools.

He took the job at one of the busiest times in his career—he was practicing law and serving as the independent counsel in the HUD probe. Still, he served with dedication and distinction on the Board of Education, as I knew he would. Mr. Thompson has practiced law at the prestigious Atlanta law firm of King & Spalding since 1977. He is a senior partner in the highly successful "Special Matters/Government Investigation" practice founded by Griffin Bell, the former Attorney General under President Carter.

As I said at the outset, President Bush could not have chosen a better nominee as Deputy Attorney General.

Larry Thompson brings a wealth of experience as a tough prosecutor, and adept litigator, a respected scholar and a skilled manager.

More importantly than that, Larry Thompson comes with no agenda. He will base every decision on what is right, not what is popular or politically expedient. He will bring to the Justice Department that same wisdom, the same thoughtfulness, and the same steady demeanor upon which he has built his stellar career.

I am very honored and very proud—in fact, this is the most rewarding experience I've had so far as a United States Senator—to introduce Larry Thompson, and to recommend him for confirmation as the next Deputy Attorney General.

Thank you, Mr. Chairman.

Chairman HATCH. Thank you. I want to say that this is high praise coming from the both of you, and your statements have meant a lot to this Committee and mean a lot to me personally, and I am sure they mean a great deal to Mr. Thompson and his wife and family. So we appreciate you taking the time to be with us.

Senator MILLER. Thank you.

Chairman HATCH. Because I want to talk to members of the Committee and see how we can expedite the procedures on this, we are going to take a short recess, and I would like all members of the Committee to go to SC-10A. So come out this door, and we will just go around to the right, and then I will have a chance to chat with you.

We will recess until we get back.

[Recess 10:57 a.m. to 11:30 a.m.]

Chairman HATCH. Just so everybody will know, we had someone invoke the 2-hour rule, which is that the Committee cannot meet after the first 2 hours of a regular session. We have been able to resolve that, and so we are going to proceed. I am tickled with that because I think—look, we have got to get these positions filled at the Justice Department. It is in the best interest of everybody in this country, Democrats, Republicans, Independents, just good citizens. And so I would like to finish this hearing today for both of these distinguished gentlemen who deserve to have that kind of treatment.

I am going to forego my questions, and I will turn to the ranking member.

Senator LEAHY. I think they should be sworn and allowed to make their statements.

Chairman HATCH. Well, now, that is a good idea.

[Laughter.]

Chairman HATCH. I get so tired of these procedural problems that I—

Senator LEAHY. Aren't you glad you have some of us minority members here to help work them out?

Chairman HATCH. I am glad we have somebody here who knows how to run the committee, is all I can say.

Would you two stand, please? Do you solemnly swear to tell the truth, the whole truth, and nothing but the truth, so help you God?

Mr. THOMPSON. I do.

Mr. OLSON. I do.

Chairman HATCH. Fine. Thank you.

Mr. Thompson, we will take your statement first. I hope both your statements will be nice and short.

Take whatever time you need. I am just being humorous.

**STATEMENT OF LARRY D. THOMPSON, NOMINEE TO BE
DEPUTY ATTORNEY GENERAL OF THE UNITED STATES**

Mr. THOMPSON. Mr. Chair, Senator Leahy, and other members of the committee, it is a great honor to be here today as the nominee to become the Deputy Attorney General of the United States. I would like to thank my home State Senators and friends, Senator Cleland and Senator Miller, for their introductions and support.

Senator, let me first introduce to the Committee my wife of 30 years, Brenda Thompson.

Chairman HATCH. Brenda, we are so happy to have you here. We are proud of your husband and you.

[Applause.]

Mr. THOMPSON. Also here as a member of my family is General Donald Scott and his wife, Betty Scott.

Chairman HATCH. General and Mrs. Scott, we are grateful to have you here.

[Applause.]

Mr. THOMPSON. Donald was Deputy Librarian of Congress. My father is deceased and my mother is 83 years old and somewhat ill. She lives in Hannibal, Missouri. I have two sons. Larry is 26. He is a chemical engineer and a first-year law student at New York University. Gary is 22 and is a senior at Kalamazoo College in Kalamazoo, Michigan. And I certainly did not want to do anything to encourage them not to finish school on time.

[Laughter.]

Chairman HATCH. You did right.

Mr. THOMPSON. Mr. Chair, it is a privilege to be considered for this position, and I would like to thank the members of the Committee and their staff for the courtesies extended to me over the past several days and providing me an opportunity to meet with many of you in the course of the confirmation process. It has been very helpful to learn what issues are of concern to you and to begin

a cooperative and working dialog that I pledge to continue if confirmed.

At the risk of introducing what might be considered some sentimentality into these proceedings, I cannot help but think, as I appear before you today, what a great Nation we live in and how fortunate I am to have had the parents I did. I was born and raised in Hannibal, Missouri. My father worked for the railroad as a laborer. My mother was a part-time cook and housekeeper. I attended a segregated school for 8 years where I had dedicated and stern teachers. But I also had wonderful and supportive teachers after integration. All of this is to say that I simply could not have imagined 40 years ago, when my father was living, that I would be sitting here before this great body today as a participant in these proceedings.

I have been practicing law for almost 27 years; 19 of those years have been primarily dedicated to the Federal criminal justice system, either as a prosecutor or defense lawyer. I have worked with and learned from a number of great lawyers. Chief among them is my senior law partner, former Attorney General, Griffin Bell.

As U.S. attorney under President Ronald Reagan, I managed and led an office covering Atlanta and over 40 counties in North Georgia, an area with a population of over 3 million people. During my tenure as United States attorney, my office conducted several successful investigations and prosecutions relating to Government program fraud, prescription drug diversion, public official corruption, illegal tax protests by supremacist organizations, and terroristic acts by members of the Ku Klux Klan that led to criminal civil rights convictions.

Also as U.S. attorney in Atlanta, I established and led the Southeast Organized Crime Drug Enforcement Task Force. The task force covered five States and involved 12 different U.S. Attorney's Offices, including the office in Mobile, Alabama, led by then U.S. Attorney Senator Jeff Sessions. The task force also included the FBI, the DEA, ATF, IRS, and the U.S. Marshals Service.

Our task force had many law enforcement successes, but none I am more proud of than the convictions of leaders of a large cocaine-smuggling and—trafficking organization that smuggled over 5 tons of cocaine into the United States during a 15-month period between 1982 and 1983. This investigation involved coordinating with a number of law enforcement and intelligence agencies, both at the domestic and international levels. At the time this was the largest cocaine-smuggling organization ever to have been destroyed and brought to justice.

As U.S. attorney, I learned to respect, admire, and, yes, even love the many energetic, talented, and hard-working prosecutors and agents with whom I worked. Many of these people literally put their lives on the line every day in order to make our communities safe places to live. Some of the things I witnessed, for example, in dangerous undercover operations were really literally heroic.

I obviously admire the Department of Justice as an institution and, if confirmed, look forward to returning to it and serving a leadership position in it.

Since serving as U.S. attorney, I have maintained an interest in public service even while continuing to practice law privately. I was

honored to serve as a replacement independent counsel for Judge Arlen Adams in the Samuel Pierce Department of Housing and Urban Development investigation, and most recently, I was honored and privileged to serve Congress as Chair of the Judicial Review Commission on Foreign Asset Control, which was a bipartisan commission you established to study certain issues relating to the Foreign Narcotics Kingpin Designation Act.

As a defense lawyer, I have represented individuals rich and poor and entities large and small accused of wrongdoing. I have handled cases throughout the country from Boston to Los Angeles. Many of these cases involved complex and lengthy investigations, and in many of them I have had to work hard to work creatively with the Government in order to resolve my clients' legal problems without resorting to trial. These resolutions always had as their foundation the mutual respect and trust between me as private counsel and the Government.

Also as a defense lawyer, and something that I discussed with Senator Leahy when we met, I have represented citizens who believe that governmental power was being misused or was even unrestrained by law. Some of these clients, individuals and entities, have doubted the fairness of our criminal justice system. All of these experiences, I believe, have prepared me for the challenges I will face as Deputy Attorney General.

I would like now briefly, Senator Hatch, to identify for you what I hope to accomplish as Deputy Attorney General, if confirmed, under Attorney General Ashcroft's leadership. I would like to discuss three important objectives.

First, and most important, the Department of Justice must continue to earn and maintain the trust and respect of all our citizens. To do this, the Department must operate in a non-partisan and impartial manner. We must be as open to the public as legitimate concerns for privacy and investigative and grand jury secrecy allow. And as we go about this important objective, I take my guidance from a speech delivered by Attorney General Robert Jackson at the Second Annual Conference of U.S. Attorneys in 1940. General Jackson noted: "The prosecutor has more control over life, liberty, and reputation than any other person in America. His discretion is tremendous."

Instructing the assembled prosecutors on how to conduct their public business, General Jackson then went on to note that, "A good prosecutor displays a sensitivity to fair play," and then he pointed out, "A citizen's safety from the abuse of power from a prosecutor lies in the prosecutor who tempers zeal with human kindness, who seeks truth not victims, who serves the law and not factional purposes, and who approaches his or her task with humility." I have always followed General Jackson's counsel.

I believe that because of my record of vigorously but impartially enforcing the laws, I have been honored to receive support for my nomination from both the Fraternal Order of Police and the National Association of Criminal Defense Lawyers.

Second, we must continue to make certain that the traditional role of Federal law enforcement is carried out with vigor and effectiveness. Federal law enforcement must attack such critical crime problems as large multi-state and international drug-trafficking or-

ganizations, complicated fraud schemes, civil rights violations, serious environmental violations, terrorism and espionage, and sometimes these areas overlap.

For example, Senator, a leader of a large cocaine-smuggling operation my U.S. Attorney's Office prosecuted in 1984, who was an admitted Marxist, an associate of the M-19 guerrilla movement in Colombia, wrote the following in a letter that was intercepted by the DEA. He wrote, "I hate all government so much. I want to destroy them. I guess in my own way sending drugs into the U.S. was one of my ways of fighting." We need to continue to direct the tremendous Federal law enforcement resources that we have at individuals like this who, if unchecked, will wreak havoc on our Nation.

And, finally, the third objective is one that is not necessarily associated with traditional Federal law enforcement but does involve helping our citizens achieve a greater sense of personal security and safety in their homes and neighborhoods. This involves violent crime, which is especially important to some of our minority and low-income citizens against whom violent crime has a disproportionate impact. Of all our important civil rights, the right to be safe and secure in one's home and neighborhood is perhaps the most important. We must work creatively, think outside of the box, as it is sometimes referred to, to work with local law enforcement agencies and perhaps even some private organizations to attack the problem of violent crime.

I certainly today do not have all the answers now, but do believe that we must continue to encourage and support local law enforcement efforts that take violent and repeat offenders out of circulation, especially those who use guns in committing their crimes. Many of our citizens continue to be literally terrorized by violent crime. The Federal Government should play a leading role in attacking this problem. At stake is the well-being of millions of citizens and even the lives of some of them.

Now, in accomplishing these objectives, I will be guided by what Attorney General Ashcroft has committed the Department of Justice to do. We will listen to Congress and to others and try to find common ground with people of widely diverse viewpoints.

Again, Mr. Chair, I am honored to be here. I thank the President for his confidence in me, and I look forward to working with all of you on this committee. Of course, I will be pleased to answer any questions that you may have.

Chairman HATCH. Thank you, Mr. Thompson. That is an excellent statement.

[Mr. Thompson's biographical information follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Larry Dean Thompson

2. Address: List current place of residence and office address(es).

Residences: Atlanta, GA and St. Simons Island, GA
Office: 191 Peachtree Street, N.E., Suite 4900, Atlanta, GA 30303

3. Date and place of birth.

November 15, 1945 - Hannibal, Missouri

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Brenda Anne Taggart Thompson
Psychologist - City of Atlanta Board of Education, 210 Pryor Street, Atlanta, GA 30335

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Culver-Stockton College - Canton, MO
1963-1967; BA, 1967

Michigan State University - East Lansing, MI
1967-1969; MA, 1969

University of Michigan - Ann Arbor, MI
1971-1974; JD, 1974

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

- No employment between 1967 and 1969

- Ford Motor Company, 1969-1971 - Labor Relations and Personnel
- Monsanto Company, 1974-1977 - Staff Attorney
- King & Spalding, 1977-1982 - Associate Attorney
- United States Attorney's Office, Northern District of Georgia, 1982-1986 - U.S. Attorney
- King & Spalding, 1986-Present - Partner
- Associate Independent Counsel (Samuel Pierce HUD Investigation), 1990-1992 (appointed; part-time)
- Independent Counsel (Samuel Pierce HUD Investigation), 1995-1999 (appointed; part-time)
- Chair, Judicial Review Commission on Foreign Asset Control, 2000-2001 (appointed by commissioners; part-time; this is a bipartisan commission established by Congress to study the blocking of assets held by drug kingpins)
- Mercer University, 1992 approx. - Adjunct Professor
- University of Georgia School of Law, 2001 - Adjunct Professor
- Goodwill Industries of Atlanta * - Director
- Village of St. Joseph * - Director
- Atlanta Urban League, 1990-1992 - Board Member and Chair
- Federal Defender Program, Northern District of Georgia * - Director
- King-Tisdell Cottage Foundation (African-American Museum) * - Director
- Woodward Academy, *-Present - Trustee
- Culver-Stockton College, *-Present - Trustee
- Providian Corporation - 1993-1997
- Providian Financial Corporation, 1997-Present - Director
- Washington Legal Foundation, *-Present - Legal Advisory Board
- Georgia Public Policy Foundation, *-Present - Director
- Southeastern Legal Foundation, *-1999 - Legal Advisory Board
- American Board of Criminal Lawyers, 2000-Present - Vice President and Elected Fellow

* Information is unavailable regarding exact time of association with entity

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Undergraduate Football and Academic Scholarships, Culver-Stockton College

Graduate Fellowship - Michigan State University

American Bar Foundation - Fellow (membership is limited to one-third of one percent of a state's lawyer population)

A.T. Walden Award for Outstanding Lawyer, Gate City Bar Association, 1984

Metropolitan Atlanta Crime Commission, Leadership Award, 1985

American Inn of Court, Lumpkin Inn - Master of the Bench, 1988

Law Day Award for Outstanding Achievement, Federal Bar Association, 1992

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association

- Criminal Justice Section, White Collar Crime Subcommittee, Vice-Chair - 2000
- Antitrust Section
- Center for Professional Responsibility
- Conference of Minority Partners in Majority Law Firms

National Bar Association

Gate City Bar Association (Atlanta, GA)

- Executive Committee *

Mound City Bar Association (St. Louis, MO) *

The Missouri Bar (non-resident Member)

The State Bar of Georgia

Atlanta Bar Association

- Criminal Law Section

Georgia Association of Criminal Defense Lawyers

National Association of Criminal Defense Lawyers

- Committee on Grand Jury Reform (1999-2000)

National Association of Former U.S. Attorneys

Federal Bar Association

- Government Relations Committee, National Organization
- Vice President for Membership, Atlanta Chapter, 1999

Committee on Lawyers' Qualifications and Conduct of the Eleventh Circuit U.S. Court of Appeals, *-Present (selected by judges of the Eleventh Circuit; the committee reviews disciplinary matters referred to it by the court)

Chair, Northern District of Georgia U.S. Magistrate Selection Panel, 1993

State of Georgia Board of Bar Examiners, 1990-1995
(selected by Georgia Supreme Court)

10. **Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.**

I believe the American Bar Association, the National Association of Criminal Defense Attorneys and the Washington Legal Foundation lobby before public bodies.

I am also a member of the Federalist Society and serve on its National Practitioners Council.

-
- * Information is unavailable regarding exact time of association with entity
 - * Information is unavailable regarding exact time of association with entity

Other organizations:

- Capital City Club
- High Museum of Art
- Republican National Lawyers Association
- University of Michigan Alumni Club
- Michigan State University Alumni Club
- Leadership Atlanta Alumni
- American Inn of Court Foundation, Lumpkin Inn
- Eleventh Circuit Court of Appeals Historical Society
- U.S. Supreme Court Historical Society
- Georgia State University School of Law, Board of Visitors
- The Buick Club of America

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

State of Missouri, 1974
 State of Georgia, 1978
 U.S. District Court for the Northern District of Georgia, 1978
 U.S. Court of Appeals, Fifth Circuit 1978-1981
 U.S. Court of Appeals, Eleventh Circuit, 1981
 U.S. Supreme Court, 1997

12. **Published Writings:** List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

AVAILABLE ARTICLES			
Tab	Title	Publisher / Published In	Date
1.	Editor: Jury Instructions in Criminal Antitrust Cases 1976 - 1980	American Bar Association Section of Antitrust Law	1982
2.	Exclusionary rule needs modifying	Cox/Atlanta Journal-Constitution	7/3/83
3.	Dealing With Black-on-Black Crime	The Heritage Foundation	January, 1990
4.	"Thomas an asset to bench"	Atlanta Journal-Constitution	7/7/91
5.	Fairness in White Collar Crime Cases: Prosecutors Should Faithfully Follow the Principles of Federal Prosecution	Washington Legal Foundation	6/19/92
6.	Structuring Informal Immunity Problems of Scope and Enforcement (with Phyllis B. Sumner, Esq.)	American Bar Association	Spring 1993
7.	Money Laundering: Business Beware (with Elizabeth Barry Johnson, Esq.)	Alabama Law Review, Volume 44 - No. 3	Spring 1993
8.	How to Keep the Other Shoe from Dropping: The Interrelationship of Civil RICO and Criminal Proceedings	The Georgia State Bar Journal, Volume 30 - No. 4	Summer 1994
9.	The Interrelationship of Civil and Criminal Environmental Proceedings (Similar speech/notes used 1994-1997 with minor, if any, changes)	The American Law Institute/ALI-ABA Course Materials Journal	February 1995
10.	Reefs, Shoals and Other Hazards: Dealing with the Overlap of Civil and Criminal Issues in Civil RICO Cases	Institute of Continuing Legal Education in Georgia	October, 1997
11.	Foreign Corrupt Practices Act Investigations: Compliance Issues and Parallel Investigations (with Douglas W. Gilfillan, Esq.)	American Bar Association	March, 1998
12.	Healthcare Investigations: Compliance Issues and Parallel Investigations (with Kristen L. Wood, Esq.)	Presentation to the American Healthcare Lawyers Association	June, 1998
13.	Why Don't We Talk About Race?	Cox/Atlanta Journal-Constitution	June, 1998
14.	Movie Review	The Wall Street Journal	August, 1999

AVAILABLE ARTICLES			
Tab	Title	Publisher / Published in	Date
15.	Loose Lips Sink Ships ... But Can They Save Your Client? Disclosure Dilemmas, Privilege Protection, and Other Problematic Issues Presented by Parallel Proceedings in Environmental Cases (with Shea R. Denning, Esq.)	<i>White Collar Crime 2000</i> , A publication of the American Bar Association	January, 2000
16.	The McDade Law is Good for the Profession	<i>The Federal Lawyer</i>	January, 2001

AVAILABLE SPEECHES, RELATED ARTICLES AND CONGRESSIONAL TESTIMONY				
Tab	Subject	Occasion or Audience	Location	Date
17.	"Narcotics Trafficking in Georgia" - Hearing before the Permanent Subcommittee on Investigations of the Committee on Governmental Affairs		United States Senate Washington, DC	10/25/82
18.	Article: "U.S. attorney says civil rights cases still priority" by James Alexander, Jr.		Atlanta Journal and Constitution	10/21/84
19.	Douglass School Reunion		Hannibal, Missouri	8/2/85
20.	Metropolitan Atlanta Crime Commission		Atlanta, Georgia	1/8/86
21.	Diversion of Prescription Pharmaceuticals with AUSA Gale McKenzie before the Economic Crime Council		Atlanta, Georgia	1/15/86
22.	Perspective (illegal drug use)		Atlanta Journal and Constitution	2/02/86
23.	Buckhead Business Association		Atlanta, Georgia	2/27/86
24.	Article: "A prosecutor's tough stance to stop drug abuse" by Dick Williams		Atlanta Journal and Constitution	3/8/86
25.	"Nomination of Jefferson B. Sessions, III, to be U.S. District Judge for the Southern District of Alabama" - Hearings before the Committee on the Judiciary		United States Senate Washington, DC	3/19/86
26.	National Parents' Resource Institute for Drug Education, Inc.		Atlanta, GA	3/22/86
27.	Agnes Scott College Forum		Decatur, Georgia	4/3/86
28.	Hannibal High School Booster Club		Hannibal, Missouri	5/15/86
29.	"Dealing with Black on Black Crime"		<i>Critical Issues: A Conservative Agenda for Black Americans</i> , The Heritage Foundation	5/87
30.	Editorial: <i>Conservatives fight Black-on-Black Crime</i>		Atlanta Constitution	6/24/87

AVAILABLE SPEECHES, RELATED ARTICLES AND CONGRESSIONAL TESTIMONY				
Tab.	Subject	Occasion or Audience	Location	Date
31.	Perspective	(Judge Bork)	Atlanta Journal and Constitution	9/20/87
32.	Legal and Ethical Guidelines for Public Elected Officials before the National Conference of Black Mayors		Hilton Head, South Carolina	12/1/89
33.	"Nomination of Judge Clarence Thomas to be Associate Justice of the Supreme Court of the United States" - Hearings before the Committee on the Judiciary		United States Senate Washington, DC	9/17/91
34.	What Every Lawyer Should Know About White Collar Crime		King & Spalding, Atlanta, Georgia	5/23/95
35.	Motion for New Trial/Criminal Case Statement before the Lumpkin Inn of Court		Atlanta, Georgia	3/12/97
36.	Healthcare Investigations: Compliance Issues and Parallel Investigations before the American Healthcare Lawyers Association		San Diego, California	6/28/98
37.	Parallel Civil and Criminal RICO Proceedings: Facing the Unthinkable		Swissôtel, Atlanta, Georgia	11/20/98
38.	Reefs, Shoals and Other Hazards: Dealing with the Overlap of Civil and Criminal Issues in Civil RICO Cases		Terrace Garden Hotel, Atlanta, Georgia	11/20/98
39.	Dealing with Grand Jury Abuse and Other Unfair Tactics for the NACDL Spring Meeting & Seminar		San Francisco, California	4/28/99
40.	Opening Statement to the Jury; Presentation Outline before the Institute of Continuing Legal Education, State Bar of Georgia		Georgia	6/10/99
41.	Legal and Ethical Guidelines for Public Elected Officials before the National Conference of Black Mayors		Miami Lakes, Florida	12/9/00

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. December 13, 2000

14. **Public Office:** State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

United States Attorney, Northern District of Georgia,
1982-1986 (appointed)

Associate Independent Counsel (Samuel Pierce HUD
Investigation), 1990-1992 (appointed; part-time)

Independent Counsel (Samuel Pierce HUD Investigation),
1995-1999 (appointed; part-time) - See Final Report to the
U.S. Court of Appeals for the District of Columbia Circuit
(October 27, 1998).

Member, Georgia Board of Bar Examiners, 1990-1995
(appointed; part-time)

Member, State of Georgia Department of Education, 1996-1998
(appointed; part-time)

Chair, Judicial Review Commission on Foreign Asset Control,
2000-2001 (appointed by commissioners; part-time; this was
a bipartisan commission established by Congress to study
the blocking of assets held by drug kingpins) - See Final
Report to Congress (January 2001).

15. **Legal Career:**

- a. Describe chronologically your law practice and
experience after graduation from law school
including:

1. whether you served as clerk to a judge, and
if so, the name of the judge, the court, and
the dates of the period you were a clerk;

I have never served as a law clerk.

2. whether you practiced alone, and if so, the
addresses and dates;

I have never practiced law as a sole
practitioner.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Monsanto Company
800 N. Lindbergh Blvd.
St. Louis, MO 63167
1974-1977 - Staff Attorney
My practice with Monsanto involved serving as staff attorney and giving legal advice, drafting and negotiating contracts, handling labor arbitrations and monitoring litigation.

King & Spalding
191 Peachtree Street, N.E.
Atlanta, GA 30303-1763
1977-1982 Associate; 1986-Present Partner
Initially, my practice at King & Spalding involved general civil litigation, antitrust litigation and trademark infringement matters. I also handled *pro bono* two or three criminal cases, including a habeas matter, Jones v. Kemp, 678 F.2d 929 (11th Cir. 1982). My practice now primarily involves white collar criminal defense matters and complex civil litigation, including grand jury investigations, internal corporate investigations, RICO litigation, False Claims Act cases and civil and criminal trials.

Department of Justice
United States Attorney
for the Northern District of Georgia
1800 Richard B. Russell Bldg.
75 Spring Street, S.W.
Atlanta, GA 30335
1982-1986 -- I led this office of approximately fifty attorneys and supervised all significant and sensitive cases.

Office of Independent Counsel
(Sam Pierce HUD Investigation)
1110 Vermont Avenue, N.W., Suite 1140
Washington, DC 20005 (office is now closed)

1990-1992 Associate Independent Counsel;
1995-1999 Independent Counsel
I conducted initial grand jury work for this investigation and subsequently oversaw the completion of the Office's work, including closing the office and preparation of its Final Report to Congress.

Judicial Review Commission
on Foreign Asset Control
1331 F Street, N.W., Suite 700
Washington, DC 20530, 2000-2001
Commission Chairman (office is now closed)

Mercer University
Walter F. George School of Law
Coleman Avenue
Macon, GA -- 1992 approx. - Adjunct
Professor

University of Georgia School of Law
Athens, GA -- 2001 - Adjunct Professor

- b. 1. **What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?**

Between 1974 and 1977, my practice could be characterized as a general corporate practice.

Since 1977, my practice has involved all phases of civil and criminal litigation, from discovery to trial. Also, since 1986, my practice has also involved counseling businesses regarding preventive law matters.

2. **Describe your typical former clients, and mention the areas, if any, in which you have specialized.**

My typical former clients would be individuals or businesses who have been under investigation by the federal government because of allegations of questionable conduct. As previously noted,

for the past almost-fifteen years, one of my heaviest areas of specialization has been white collar criminal defense matters.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Since 1986, I have appeared in court frequently.

2. What percentage of these appearances was in:
 (a) federal courts;
 (b) state courts of record;
 (c) other courts.

Almost all of my practice involves federal matters and at least ninety-five percent of my court appearances are in federal court.

3. What percentage of your litigation was:
 (a) civil;
 (b) criminal.

Approximately eighty percent of my litigation matters are criminal cases.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

Ten. I was lead counsel in five of these cases, co-counsel in three and sole counsel in two. I have also tried two cases to decision before arbitrators.

5. What percentage of these trials was:
 (a) jury;
 (b) non-jury.

Approximately eighty percent of these matters were jury trials.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representations;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

1. U.S. v. Rosenthal, et al., 793 F.2d 1214 (11th Cir. 1986). As U.S. Attorney, I participated in the investigation and trial of this matter, examining witnesses, preparing trial briefs and arguing trial motions. Harold Rosenthal and over 30 other individuals were indicted on charges of conducting a continuing criminal enterprise, RICO, conspiracy and distribution of cocaine. The case involved a large cocaine smuggling and distribution organization that operated out of Columbia, the Bahamas, south Florida and north Georgia. The case, called Operation Southern Comfort, was the first major case of the Organized Crime Drug Enforcement Task Force established by Attorney General William French Smith. I received a citation from the Drug Enforcement Administration for "outstanding prosecutorial effort." Eleven of the twelve defendants who went to trial were convicted. The judge was the Honorable G. Ernest Tidwell of the Northern District of Georgia. Craig Gillen (Gillen, Dailey & Cromwell, 3490 Piedmont Road, Suite 1050, Atlanta, Georgia 30305, 404.842.9456) and James Deichert (Fellows Johnson & La Briola, LLP, Peachtree Center, Suite 2300, South Tower, 225 Peachtree Street, N.E., Atlanta, Georgia 30303, 404-586-2029) were co-counsel for the government. W. Bruce Maloy (Maloy & Jenkins, The Grand, 25th Floor, 75 Fourteenth Street, N.W., Atlanta, Georgia 30309, 404-875-2700) and Steven H. Sadow (800 The Grant Bldg., 44 Broad Street, N.W., Atlanta, Georgia 30303, 404-577-1400) represented two of the defendants who went to trial.

2. U.S. v. Wardlaw, Criminal Action No.1:97-CR-114-MHS, 977 F. Supp. 1481, (N.D.Ga. 1997). I was lead counsel in this case involving allegations of bribery by executives of a soft drink manufacturer and distributor. My client (one of the named defendants) was acquitted. The judge was the Honorable Marvin Shoob of the Northern District of Georgia. My co-counsel was Charles Fels (Ritchie, Fels & Dillard, P. O. Box 1126, Knoxville, TN 37901-1126, 423-637-0661) and W. Bruce Maloy (Maloy & Jenkins, The Grand, 25th Floor, 75 Fourteenth Street, N.W., Atlanta, Georgia 30309, 404-875-2700) was counsel for the other defendant. William L. McKinnon, Jr. (U.S. Attorney's Office, 75 Spring Street, S.W., Atlanta, Georgia 30335-6901, 404-581-6046) was one of the prosecutors.
3. U.S. v. Lankford, 955 F.2d 1545. (11th Circuit 1992) As lead appellate counsel for the Defendant, I argued this case before the Eleventh Circuit U.S. Court of Appeals. The Court (Judges Peter Fay and Stanley Birch, with Judge Walter E. Hoffman of the Eastern District of Virginia - by designation, dissenting) reversed the trial court's ruling on the permissible scope of cross-examination and ruled that the defendant's right to confrontation under the Sixth Amendment had been violated. The guilty verdict was reversed and the case remanded for a new trial. The U.S. Attorney declined to re-try the case. My co-counsel was Stephanie Parker (Jones, Day, Reavis and Pogue, 303 Peachtree Street, 3500 One Peachtree Tower, Atlanta, Georgia 30308, 404-581-8552) and the prosecutor was William Gaffney (U.S. Attorney's Office, 75 Spring Street, S.W., Atlanta, Georgia 30335-6901, 404.581.6025).
4. U.S. v. Work, Criminal Action No. 1:85-CR-236A, 1985. As U.S. Attorney, I was lead counsel in this case against the president of a tax protestor organization called the Southeastern Patriots. He was indicted for filing false tax returns for over thirty individuals and was found guilty by the jury. My co-counsel was Jere Morehead (Director, University of Georgia Honors Program and Foundation Fellows Program, 115 Academic Building, Athens, Georgia 30602-6116, 706.542.6908) and defense counsel was Bruce S. Harvey (146 Nassau Street, Atlanta, Georgia 30303, 404-659-4628). The

judge was the Honorable Robert Hall (deceased) of the Northern District of Georgia.

5. U.S. v. Burke, 784 F.2d 1090 (11th Cir. 1986). As U.S. Attorney, I argued this case before the Eleventh Circuit. The case involved an appeal from the district court's suppression of evidence against a defendant who had been charged with unlawful possession of a firearm by a felon. The Eleventh Circuit (Judges Frank Johnson and Joseph Hatchett, with Judge Anthony Alaimo of the Southern District of Georgia - by designation) reversed the district court and held that the search warrant described the premises to be searched with sufficient particularity. The defendant was represented by John Ellis of the Federal Defender Program (100 Peachtree Street, N.W., Atlanta, Georgia, 404-688-7530).
6. U.S. v. Georgia Pacific Corporation, Criminal Action No.1:91-CR-321-GET (1991). I was co-counsel with Seth Waxman (Visiting Professor, Georgetown University Law Center, Room 480, 600 New Jersey Avenue, N.W., Washington, DC 20001, 202-662-9912). This case involved a complex and lengthy grand jury investigation of a corporation accused of making false statements in connection with its income tax return. I represented the corporation during the investigation, negotiated the plea agreement and represented the client in court at the plea and sentencing hearings. The prosecutors were Martin Weinstein (Foley & Lardner, 3000 K Street, N.W., Suite 500, Washington, DC 20007-5100, 202-672-5435) and Michael J. O'Leary (Kroll Associates, 1349 W. Peachtree Street, Suite 1900, Atlanta, Georgia 30309, 404-898-9460). The judge was the Honorable J. Ernest Tidwell of the Northern District of Georgia.
7. U.S. v. Hughes Aircraft Company, Criminal Action No. 1:90-CR-77 (1990). The case involved Operation Uncover, an investigation of unlawful trafficking in classified Department of Defense documents. I represented the company during a lengthy grand jury investigation, participated in hearings and meetings regarding collateral issues, negotiated the plea agreement and represented the company at the plea and sentencing hearings. My co-counsel was Michael Millikin (General Motors Corporation, 300 Renaissance Center, Detroit, Michigan 48265-3000, 313-665-4913),

and the prosecutor was Randy Bellows (U.S. Attorney's Office, Eastern District of Virginia, 2100 Jamieson Avenue, Alexandria, Virginia 22314, 703.299.3700). The judge was the Honorable James C. Cacheris of the Eastern District of Virginia.

8. Shared Network Technologies, Inc. v. Taylor, 669 F.Supp. 422 (N.D.Ga. 1987). This case involved a complex internal investigation and a civil RICO lawsuit against the former president of my client, a company selling shared telecommunication services. I was lead counsel for the plaintiff company. In ruling on the defendant's motion for summary judgment, the district court held that the company had stated a valid RICO claim and found that the pattern of racketeering activity had been plead with sufficient particularity. The defendant's counsel was J. Christopher Simpson (550 Pharr Road, Suite 410, Atlanta, Georgia 30305, 404-266-2421) and the judge was the Honorable Robert Hall of the Northern District of Georgia (deceased).
9. U.S. v. Lockheed Corporation, Criminal Action No. 1:94-CR-226 (1994). This case involved a complex and lengthy grand jury investigation that led to an indictment alleging violations of the Foreign Corrupt Practices Act and numerous allegations involving false statements, obstruction of federal audits and conspiracy to defraud the federal government. I was lead counsel for the corporation and participated in numerous pre-trial hearings before the magistrate judge and district judge. I also negotiated the plea agreement, participated in hearings and meetings regarding collateral issues, and represented the company at the plea and sentencing hearings. The case was resolved shortly before trial by a plea to certain Foreign Corrupt Practices Act allegations. The judge was the Honorable Marvin Shoob of the Northern District of Georgia. My co-counsel was Martha B. Wright (Lockheed Martin Aeronautical Systems, 86 South Cobb Drive, Marietta, Georgia 30063, 770-494-4556) The prosecutors were Martin Weinstein (Foley & Lardner, 3000 K Street, N.W., Suite 500, Washington, DC 20007-5100, 202-672-5435), Nicolette Templar {404-581-6067} and Daniel Caldwell {404-581-6224} (both are with the U.S. Attorney's Office, 75 Spring Street, S.W., Atlanta, Georgia 30335).

10. U.S. v. Hightower, USDC/NDGA, No. 1:00-CR-377-RWS. 2000. This case involved an elected Fulton County, Georgia official who was implicated in a wide-ranging federal investigation of city and county public officials. I was lead counsel for the defendant, Michael Hightower, and participated in negotiating the plea agreement and representing the client at the plea and sentencing hearings. The client's cooperation was extraordinary and the court granted a multi-level downward departure, sentencing the client to a six-month term of incarceration. The prosecutor was Sally Yates (U.S. Attorney's Office, Northern District of Georgia, 75 Spring Street, S.W., Atlanta, Georgia 30335, 404-581-6081) and the judge was the Honorable Richard Story of the Northern District of Georgia.
11. U.S. v. United States Fidelity and Guaranty Company, et al., Cr-88-90-04-G (Middle District of North Carolina, 1988). I was co-counsel in this case in which the client, an insurance company, and a large construction Company, were indicted on charges of conspiracy to defraud and false statements. I helped prepare the case for trial, argued pretrial motions and examined witnesses. The client was acquitted on all counts. My lead co-counsel was Wade Smith (919-821-4711, Tharrington Smith, 209 Fayetteville Street Mall, Raleigh, N.C. 27601). Counsel for the co-defendant was Norwood (Woody) Carlton Tilley, Jr., who is now a U.S. District Court Judge (336-332-6080, 324 West Market Street, Greensboro, N.C. 27401). The prosecutor was Paul Winman (U.S. Attorneys Office, Greensboro, N.C. 27401 (336-333-5351). The judge was the Honorable James Harry Michael, Jr. (sitting by designation of the Fourth Circuit).
17. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

Over the past several years in private practice, I have been lead counsel in a number of grand jury investigations (at least thirty) in which the government has declined to prosecute my clients or the matter which was the subject of

the investigation was resolved civilly or administratively. In these cases, it is important that defense counsel conduct a thorough investigation of the matters under inquiry and interface with the government in a straightforward, yet persuasive manner. I believe it is an important role of defense counsel, especially in white collar defense matters, to do everything possible to help the client resolve a legal problem short of criminal prosecution. Resolving these clients' problems short of expensive and risky litigation is a professional achievement of which I am proud. For example, in two cases, one involving an attorney and another involving a financial services company, the government agreed to close its investigation after thorough pre-indictment presentations on the applicable law and evidence.

As U.S. Attorney, I was honored and pleased to take leadership roles in significant law enforcement initiatives. For example, along with former Atlanta FBI Special Agent in Charge, Weldon Kennedy, I managed to successful conclusion a major public undercover case called Operation Vespine. Also, I helped establish and managed to successful conclusion a nationwide investigation of prescription drug diversion and counterfeiting. My testimony in 1985 before Congressman Dingell's Subcommittee on Oversight and Investigation is enclosed. See Prescription Drug Diversion and Counterfeiting-Part I: Hearings Before the Subcomm. on Oversight and Investigations of the Comm. on Energy and Commerce House of Representatives, 99th Cong. 293 (1985).

Also, as U.S. Attorney, I established and managed the Southeastern Organized Crime Drug Enforcement Task Force ("OCDETF"). This task force effort involved twelve federal judicial districts in Georgia, North Carolina, South Carolina, Tennessee and Alabama. I led and coordinated with eleven other U.S. Attorneys, the Federal Bureau of Investigation, Drug Enforcement Administration, Internal Revenue Service, Bureau of Alcohol, Tobacco and Firearms, U.S. Marshall Service and several state investigative agencies. The Southeastern OCDETF successfully investigated and prosecuted several kingpins and key players in domestic and international drug trafficking organizations.

I am pleased that I have been able to make significant contributions to the profession. I served as a Georgia Bar Examiner between 1990 and 1995. This was a very significant time commitment that involved preparing two exam questions each year and coordinating the grading of over fifteen hundred examinations annually. I have also chaired the Northern District of Georgia's Magistrate Selection Committee (reviewing numerous applications and interviewing several candidates). I now serve on the Eleventh Circuit U.S. Court of Appeals' Committee on Lawyer Qualifications and Conduct. This involves investigating sensitive disciplinary matters referred to the Committee by the Court. Finally, I have lectured at many seminars and CLE programs over the years on a variety of topics, including legal ethics, RICO litigation, grand jury investigations and internal corporate investigations.

Recently, I have been pleased to continue to serve the public and Congress by being named as Chair to the Judicial Review Commission on Foreign Asset Control, a bipartisan commission established by Congress to study the blocking of assets held by foreign drug kingpins. The commission submitted its final report to Congress in January 2001 recommending judicial review of certain decisions affecting U.S. citizens and business interests and noting the challenge faced by balancing the needs of law enforcement in combating foreign drug kingpins with the due process protections on U.S. businesses and citizens who may unwittingly do business with them.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

In liquidating what I would receive from my firm's retirement plan, I would seek advice from Department of Justice ethics officials and follow whatever course of action is recommended. I do not plan to have any arrangement of any kind with any private entity or business.

My wife's defined benefit plan for education personnel with the State of Georgia is calculated on twice the years of service times the highest two years of pay. If a person retires before acquiring 30 years and under 60 years of age, there is a penalty. My wife presently has approximately 24 years of service.

My sources and approximate amounts of deferred income arrangements and stock options are as follows:

- Options: Approximately \$2.3 million (I plan to exercise these options in accordance with advice from Department of Justice Ethics Officials)
- Deferred retirement income: I will be paid \$1,605,900 in deferred compensation pursuant to the firm's partnership agreement in twenty-four (24) monthly installments upon my withdrawal from the firm
- Return of Capital Contribution: Approximately \$30,000 (this is not the discounted present-day value)
- King & Spalding investment partners - \$3,675

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I would consult with the appropriate Department of Justice ethics officials regarding any matter constituting a potential conflict.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

I am committed to teach one day per week (Wednesdays) at the University of Georgia as an unpaid adjunct professor. This commitment terminates on April 25th. Other than the completion of this commitment, I have no plans whatsoever to pursue any type of outside employment while serving in the position for which I have been nominated.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Gift: Bruce Maloy (personal friend) - Leather Briefcase - valued at approximately \$700.00

Honorarium: National Conference of Black Mayors - \$400

Also, see enclosed financial disclosure report.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See enclosed completed financial net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have been a member of at least the following political campaigns:

- Georgia Lawyers for Bush, 1988. I wrote letters and made telephone calls in support of the candidate.
- Paul Coverdell for Senate Campaign, 1992 and 1998. I wrote letters and made telephone calls in support of the candidate.
- Mike Bowers for Governor, 1998. I was involved generally in the support of the candidate.
- Marvin Arrington for Mayor (City of Atlanta), 1997. I wrote letters and made telephone calls in support of the candidate.
- Paul Howard for Fulton County District Attorney, 1996. I wrote letters and made telephone calls in support of the candidate.
- Lawyers for Bush, 2000. I was involved generally in support of the candidate.
- Mack Mattingly for Senate Campaign, 2000. I was involved generally in support of the candidate.
- Justice Leah Sears Collins for Supreme Court, 1998. I was co-chair of the campaign committee.
- Judge Brenda Hill Cole for State Court of Fulton County, 2000. I was co-chair of the campaign committee.
- Judge Yvette Miller for State Court of Fulton County, 1996. I was co-chair of the campaign.
- King & Spalding Committee for Good Government (PAC).

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

As an associate, I accepted pro bono appointments in federal criminal cases. One habeas matter involved a full evidentiary hearing with witnesses and an appeal to The Eleventh Circuit, Jones v. Kemp, 678 F.2d 929 (11th Cir. 1982). This case required a substantial time commitment.

For a number of years, including the time I was U.S. Attorney, I served as the volunteer coordinator of judging for the Atlanta NAACP ACT-SO competition. The ACT-SO program is an academic competition, and the Atlanta effort involved a number of inner-city schools. I was responsible for recruiting judges and organizing judging for the various events. This activity required a substantial time commitment.

From 1990 to 1992 I served as chair of the Atlanta Urban League which also required a substantial time commitment.

I was the responsible partner in my firm on matters for Morris Brown College, a historically Black college in Atlanta. The College experienced severe financial pressures and the firm represented the College either pro bono or at substantially reduced rates on a number of litigation cases and commercial matters. I personally handled several of the litigation cases and appeared in state court on behalf of the College. Both myself and the firm spent hundreds of hours on behalf of the client.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

No.



U.S. Department of Justice

MAR 23 2001

Washington, D.C. 20530

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Larry D. Thompson who has been nominated by the President to serve as Deputy Attorney General, Department of Justice.

We have conducted a thorough review of the enclosed report, and have counseled Mr. Thompson to seek advice about disqualification or to request a waiver before participating in any matter that could affect his financial interests because of the restrictions of 18 U.S.C. § 208. Section 208 generally prohibits him from participating personally and substantially in a particular matter in which he, his spouse or anyone whose interests are imputed to him under the statute has a financial interest. Because he will receive payments from the King and Spalding deferred compensation retirement plan which the firm provides to departing partners after at least 10 years of service, he will retain a financial interest in the firm. The payments will be made in monthly installments over 24 months following his resignation from the firm. Also, he owns stock and stock options in Provident Financial Corporation acquired as compensation for his service on the Board of Directors since 1997. Because he is now serving as an unpaid adjunct professor at the University of Georgia Law School he will seek advice before participating in any matter affecting the University. Further, we have counseled him to seek advice before participating in any matter that could affect his wife's employer, the Atlanta Public School System because of her employment with the system and her interest in its defined benefit retirement plan.

Ms. Amy L. Comstock


Page 2

The law firm of King and Spalding from which he will resign upon confirmation will return in a lump sum his capital account and his interests in King and Spalding Investments and King and Spalding 1987-8 Pool Partners, Ltd. after his resignation. The latter investment is not reported on his financial disclosure report because it is valued below the reporting threshold.

Because of the standard of conduct on impartiality at 5 CFR 2635.502, we have counseled him to seek advice before participating in any particular matter having specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. He has a covered relationship with the organizations in which he holds a position reported on Schedule D of his report. He has agreed to resign from all but one of these positions upon confirmation. He will terminate his position as adjunct professor at the University of Georgia Law School at the end of the present semester in April 2001. He also will have a covered relationship with his clients and will seek advice before participating in any matter involving one of them.

In light of this counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,



Stephen R. Colgate
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

5010-106
USF 278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Governmental

(Check box if comments are continued on the reverse side) ☐

SE 278 (Rev. 1-84)
 U.S. Office of Government Ethics
 Reporting Individual's Name
Thompson, Larry D.

SCHEDULE A

Page Number
2 of 12

Assets and Income	BLOCK II Valuation of Assets at close of reporting period												BLOCK C Income: type and amount. If "None (or less than \$200)" is checked, no other entry is needed in Block C for that item.											
BLOCK A For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value of \$1,000 or more at the close of the reporting period, or which generated more than \$200 in income during the reporting period, together with such income. For yourself, also report the source and actual amount of carried income exceeding \$200 (other than interest, dividends, annuities, or royalties) of more than \$1,000 (except report the actual amount of any annuities over \$200 of your spouse). None <input type="checkbox"/>																								
Examples Central Airlines Common Doe Jones & Smith, Hometown, State Kempsone Equity Fund IRA: Horsham Ski Index Fund																								
1 American Century Income and Growth Fund (IRA)																								
2 American Century International Growth Fund (IRA)																								
3 Allegany/Montag & Caldwell Growth Fund (IRA)																								
4 Cohen & Steers Realty Shares Fund (IRA)																								
5 Dreyfus Founders Passport Fund (IRA)																								
6 Gabelli Small Cap Fund (IRA)																								
* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value as appropriate.																								

Reporting Individual's Name
Thompson, Larry D.

Thompson, Larry D.

Page Number

2. of 12

[illegible]

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

Thompson, Larry D.

SCHEDULE A continued
(Use only if needed)

Page Number

4 of 12

Assets and Income		Valuation of Assets at close of reporting period												Income: Type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.										Other Income (Specify Type & Actual Amount)		Date (Mo., Day, Yr.) Only if Income
BLOCK A		BLOCK B												BLOCK C												
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000	Over \$5,000,000			
		Type																								
		Dividends																								
		Qualified Trust																								
		Excepted Investment Fund																								
		Interest																								
		Rent and Royalties																								
		Capital Gains																								
1	Cohen & Steers Realty Shares Fund (IRA)	X																								
2	Dreyfus Founders Passport Fund (IRA)	X																								
3	Gabelli Small Cap Growth Fund (IRA)	X																								
4	Gabelli Growth Fund (IRA)	X																								
5	LOOMIS SAYLES BOND FUND (IRA)	X																								
6	Sit. Developing Markets Fund (IRA)	X																								
7	Value Line Convertible Fund (IRA)	X																								
8	Value Line Special Situations Fund (IRA)	X																								
9	Pershing Government Account Fund (IRA)	X																								

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

SE 278 (Rev. 5-78)
S 1018, Part 2b-4
U.S. Office of Government Ethics

Reporting Individual's Name
Thompson, Larry D.

Schedule Number
5 of 12

SCHEDULE A continued (Use only if needed)

Assets and Income	Valuation of Assets at close of reporting period												Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block c. for that item.												Date (Month, Day, Yr.) (Only if itemize)
	BLOCK B												BLOCK C												
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	Over \$5,000,000	Other Income (Specify Type & Actual Amount)		
	Type	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	Over \$5,000,000	Other Income (Specify Type & Actual Amount)	Date (Month, Day, Yr.) (Only if itemize)								
1. Fidelity VIP Contrafund																									
2. Fidelity VIP Equity Income Fund																									
3. Fidelity VIP Investment Grade Bond Fund																									
4. Fidelity VIP Overseas Fund																									
5. Fidelity VIP Mid Cap Fund																									
6. PBHC Small Cap Value																									
7. Warburg Pincus Small Co. Gr.																									
8. Fidelity VIP Growth Fund																									
9. MBNA Certificate of Deposit																									

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher category of value, as appropriate.

Prior Edition Cannot Be Used.

SF 278 (Rev. 5-7-79)
 U.S. Office of Government Ethics
 Reporting Individual's Name

Thompson, Larry D.

Page Number
 6 of 12

SCHEDULE A continued (Use only if needed)

Assets and Income	BLOCK B Valuation of Assets at close of reporting period												BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.												Date (Mo., Day, Yr.) Only if thru annual
	BLOCK B												BLOCK C												
	Type												Amount												
1	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Mo., Day, Yr.) Type & Amount	
2																									
3																									
4																									
5																									
6																									
7																									
8																									
9																									
10																									

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

Assets and Income		BLOCK B Valuation of Assets at close of reporting period														BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.										Page Number 7.8 12						
BLOCK A		BLOCK B														BLOCK C																
1	King & Spalding - Atlanta, GA (Law Firm Partnership Income)	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	Excepted Investment Fund	Qualified Trust	Dividends	Rent and Royalties	Interest	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000	Over \$5,000,000	Other Income (Specify Type & Amount)	Date (Mo., Day, Yr.) Only if Income	
2																																
3	King & Spalding Investments																															
4	Berger Small Cap Value Fund																															
5	Dreyfus Founders Passport Fund																															
6	Fundamental Investors Fund																															
7	Gabelli Growth Fund																															
8	Marisco Focus Fund																															
9	New Perspective Fund																															
10																																

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Filament Cannot Be Used.

SCHEDULE A continued
(Use only if needed)

Page Number

Thompson, Larry D.

Assets and Income

Valuation of Assets
at close of reporting period

Income: type and amount. If checked, no other entry is needed.

Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.

	BLOCK A	BLOCK B	BLOCK C
		Type	Amount
		Dividends	Other Income (Specify Source & Amount)
		Rent and Royalties	Date (Mo., Day, Yr.) Only if Illegible
		Interest	
		Capital Gains	
		Qualified Trust	
		Excepted Trust	
		Excepted Investment Fund	
		Over \$50,000,000	
		\$75,000,001 - \$50,000,000	
		\$50,000,001 - \$25,000,000	
		\$25,000,001 - \$5,000,000	
		\$5,000,001 - \$1,000,000	
		Over \$1,000,000*	
		\$1,000,001 - \$250,000	
		\$250,001 - \$500,000	
		\$500,001 - \$1,000,000	
		\$100,001 - \$250,000	
		\$150,001 - \$100,000	
		\$15,001 - \$50,000	
		\$1,001 - \$15,000	
		None (or less than \$1,001)	
1	Oak Value Fund	X	X
2	Value Line Special Situations Fund	X	X
3	Vanguard Growth Equity Fund	X	X
4	Fidelity Spartan Municipal Income Fund	X	X
5	Fidelity Municipal Money Market Fund	X	X
6	Resolution Funding Corp. STRIPS (Zero Coupon Bonds)	X	X
7	U.S. Treasury Zero Coupon Bonds/STRIPS	X	X
8	Schwab Money Market Fund	X	X
9	American Century International Growth Fund	X	X

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot Be Used.

SE 228 (Rev. 5-1-78)
 U.S. Office of Government Ethics
 Reporting Individual's Name

Assets and Income		BLOCK B Valuation of Assets at close of reporting period												BLOCK C Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.												Page Number 9 of 12					
BLOCK A		BLOCK B												BLOCK C												Date (Mo., Day, Yr.) Only if Honoraria					
		Valuation of Assets at close of reporting period												Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.																	
		None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	Over \$1,000,000*	\$1,000,001 - \$5,000,000	\$5,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	Capital Gains	Interest	Rent and Royalties	Dividends	Qualified Trust	Excepted Trust	Excepted Investment Fund	Over \$50,000,000	\$50,000,001 - \$500,000,000	\$500,001 - \$1,000,000	\$1,000,001 - \$100,000,000	\$100,001 - \$1,000,000	\$1,000,001 - \$5,000,000	\$5,000,001 - \$100,000,000	Over \$100,000,000	Over \$5,000,000	Other Income (Specify Type & Actual Amount)
1	American Century Income & Growth Fund																														
2	Strong Growth 20 Fund																														
3																															
4																															
5	King's College of Arts & Sciences																														
6	Constitutional Educational Plan																														
7	St. Louis Public Schools																														
8	St. Louis Public Schools																														
9	St. Louis Public Schools																														

* This category applies only if the asset/income is solely that of the filer, spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories in value, as appropriate.

10 0612

Price Number

SCHEDULE C

Thompson, Larry D.

Part I: Liabilities

Report liabilities over \$10,000 owed to you or your spouse at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude

a mortgage on your personal residence secured by automatic payment plan entered by you or your spouse, or liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

Examples	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term If Applicable	Category of Amount or Value (a)	Price Number
1	First Thrift Bank, Washington, DC John Jones, 1211 R, Washington, DC	Mortgage on rental property, Baltimore	1991	8%	25 yrs.	Over \$50,000.00	053.000.000
2	SunTrust Bank Atlanta, GA	Primarily note	1990	10%	On Demand	\$5,000.001 - \$50,000.000	55.000.000
3		Promissory Note	2001	Prime + .5%		Over \$50,000.00	55.000.000
4						\$5,000.001 - \$50,000.000	55.000.000
5						Over \$50,000.00	55.000.000

*This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g., pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

Examples	Status and Terms of any Agreement or Arrangement	Parties	Date	Price Number
1	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/91.	Doc Jones & Smith, Hometown, State	7/95	02/786
2	Member benefit plans available to King & Spalding partners in connection with health and life insurance	King & Spalding - Atlanta, GA		
3	Will receive return of capital account and King & Spalding interest in King & Spalding	"		
4	Retirement Plan with variable dollar annuity	"		
5	Retirement Plan with variable dollar annuity	"		
6	Will receive interest in King & Spalding Pool Partners, 1978	"		

Page 278 (Rev. 5-90) U.S. Office of Government Ethics

SCHEDULE D

Thompson, Larry D.

Page Number

Page Number
11 of 12

Part I: Positions Held Outside U.S. Government

Part I: Positions Held Outside U.S. Government
Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of an organization or educational institution. **Exclude** positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None

Rank	Name	Address	City	State	Year	Type of Organization	Position Held	Term (Mo./Yr.)	Present
1	Atlanta Urban League, Atlanta, GA					Non-profit Civic Organization	Director	02/86	05/00
2	Woodward Academy, College Park, GA					Private School	Trustee *	05/88	Present
3	Culver-Stockton College, Canton, MO					Private College	Trustee *	10/92	Present
4	Washington Legal Foundation, Washington, DC					Public Interest Organization	Legal Advisor *	1989	Present
5	Georgia Public Policy Foundation, Atlanta, GA					Public Interest Organization	Director *	06/93	Present

(continued)

Part II: Compensation in Excess of \$5,000 Paid by One Source

Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate.

None ☐

None

	Source (Name and Address)		Brief Description of Duties
	How Jones & Smith, Inc., was contacted	Legal services	
Examples	Metropolitan University (Client of Joe Jones & Smith), Montgomery, State	Legal services in connection with university construction	
1	King & Spaulding, Atlanta, GA	Legal Services	
2	list of clients attached		
3			
4			
5			
6			

Prior Editions Cannot Be Used.

5774 (Rev. 10-84)
U.S. Office of Government Ethics

Reporting Individual's Name Thompson, Larry D.		Schedule D		File Number 12 of 12
Part I: Positions Held Outside U.S. Government Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.				
Examples	Source (Name and Address)	Type of Organization	Position Held	From (Mo./Yr.) To (Mo./Yr.)
1	Provident Financial Corporation San Francisco, CA	Non-profit educational	Director *	06/97 Present
2	Atlanta Chapter, Federal Bar Association Atlanta, GA	Non-Profit Professional Organization	Vice President, Membership	06/95 09/00
3	King & Spalding	Law Firm	Partner *	02/86 Present
4	American Board of Criminal Lawyers	Elected Association of Attorneys	Vice President *	10/00 Present
5	University of Georgia Law School	Law School	Adjunct Professor	1/01 4/01
Part II: Compensation in Excess of \$5,000 Paid by One Source Report sources of more than \$5,000 compensation received by you or your business during the reporting period. Do not include compensation received from the U.S. Government or from any source for which you are an Incumbent, Termination Filable Candidate, or Presidential or Vice Presidential Candidate. Do not include compensation for services provided directly by you during any one year of this reporting period to the major clients and customers of any corporation, firm, partnership, or other business enterprise, or any other source generating a fee or payment of more than \$5,000. You need not report the U.S. Government as a source.				
Examples	Source (Name and Address)	Brief Description of Duties		
1	Law Jones & Smith, Honesdale, PA Piedra University (fellow of the Jones & Smith, Honesdale, PA)	Legal services in connection with university construction		
2				
3				
4				
5				
6				

Prior Editions Cannot Be Used.

LARRY D. THOMPSON

Clients¹ on whose matters I worked and from whom the firm has received at least \$5,000.00:

- AmeriChoice Corporation - Vienna, VA
- Eaton Corporation - Cleveland, OH
- Federal Parts International, Inc. - Norcross, GA
- The Devereux Foundation - Villanova, PA
- Henry Pratt Company - Exeter, NH
- Gary Salter - Boca Raton, FL
- Michael Hightower - Atlanta, GA
- General Motors Corporation - Detroit, MI
- Lockheed Martin Corporation - Marietta, GA
- Hercules, Inc. - Trevoise, PA
- Zartic, Inc. - Rome, GA
- Thiele Kaolin Company - Sandersville, GA
- Clark-Atlanta University - Atlanta, GA
- Raymond McClendon - Atlanta, GA
- First Union Corporation - Charlotte, NC
- DIRECTV, Inc. (Parent Company: Hughes Electronics) - El Segundo, CA
- National Specialty Services, Inc. (Parent Company: Cardinal Health, Inc.) - Columbus, OH
- Cognis Corporation (formerly Henkel Corporation) - King of Prussia, PA
- Texaco, Inc. - Houston, TX
- The Coca-Cola Company - Atlanta, GA
- Dan Paradies - Atlanta, GA

¹ This is not a complete list. Some clients are not listed because of confidentiality concerns.

FINANCIAL STATEMENT NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members of your household.

ASSETS			LIABILITIES		
Cash on hand and in banks	154	900 00	Notes payable to banks—secured		
U.S. Government securities—add schedule	13	000 00	Notes payable to banks—unsecured	50	000
Listed securities—add schedule	1,417	000 00	Notes payable to relatives		
Unlisted securities—add schedule	1,906	300 00	Notes payable to others		
Accounts and notes receivable:			Accounts and bills due	5	000
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule	294	000
Real estate owned—add schedule	975	000 00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Autos and other personal property	98	000 00			
Cash value—life insurance					
Other assets—itemize:					
Household	392	000 00			
Art	815	000 00			
401-K Plan	1,027	000 00	Total liabilities	349	000
Individual Retirement Account	191	000 00	Net worth	6,639	200
Total assets	6,988	200 00	Total liabilities and net worth	6,988	200
CONTINGENT LIABILITIES			GENERAL INFORMATION		
As endorser, cosigner or guarantor	None		Are any assets pledged? (Add schedule.)	None	
On leases or contracts	None		Are you defendant in any suits or legal actions?	None	
Legal Claims	None		Have you ever taken bankruptcy?	None	
Provision for Federal Income Tax	None				
Other special debt	None				

LARRY D. THOMPSON
NOTES TO FINANCIAL STATEMENT
MARCH 1, 2000

ASSETS

Values are based on estimated market value except where true market is known. The true market value of listed stocks is based on the Wall Street Journal.
 Values are rounded to the nearest \$100.00.

CASH

Suntrust Bank	\$	38,000	
Fidelity Investment Money Market		116,900	\$ 154,900

U.S. GOVERNMENT SECURITIES

Municipal Income Fund			\$ 13,000
-----------------------	--	--	-----------

LISTED SECURITIES

26,814 Shares Provident @ \$52.10	\$	1,397,000	
538 Shares Post Properties @ \$37.26		20,000	\$ 1,417,000

UNLISTED SECURITIES INVESTMENTS

Medical Savings Account	\$	1,400	
Fidelity Investments Annuity		240,000	
King & Spalding 1987-8 Pool Partners		12,000	
King & Spalding Investments		14,000	
King & Spalding Partnership - Capital		32,000	
King & Spalding Buy Out Provision		1,605,900	\$ 1,905,300
Payable over 24 months			

REAL ESTATE

Personal Residence - Atlanta, GA	\$	525,000	
House - St. Simons Island, GA		450,000	\$ 975,000

AUTOS AND TRUCKS

1955 Buick Super - Estimated Value	\$	12,000	
1972 Chevrolet Monte Carlo - Estimated Value		10,000	
1987 Chevrolet Nova - Black Book Value		2,600	
1988 Buick Reatta - Estimated Value		7,000	
1990 Buick Reatta Convertible - Estimated Value		20,000	
1997 Pontiac Grand Prix - Estimated Value		9,800	
1997 Buick Park Avenue - Black Book Value		17,200	
2000 Chevrolet Blazer - Black Book Value		19,400	\$ 98,000

OTHER ASSETS

Household and Art values are based on Insured Amounts.

401-K and IRA Account values are based on current account reports.

LIABILITIESACCOUNTS PAYABLE

Estimated Amount of Current Household Expense Due	<u>\$ 5,000</u>
---	-----------------

REAL ESTATE MORTGAGES

Sun Trust Mortgage - First Mortgage-Residence	\$ 69,000	
Sun Trust Mortgage - Home Equity-Residence	40,000	
Sun Trust Mortgage - First Mortgage-St. Simons	<u>185,000</u>	<u>\$ 294,000</u>

UNPAID TAXES

2000 Tax Return has not been completed. However, we believe that estimates paid are adequate to cover liability.

No other taxes are unpaid.

SPECIAL NOTE

An option exists to purchase Providian Stock. The option is currently valued at \$2,300,000 if exercised. The item has not been listed in assets because a decision has not been made to exercise the option.

Mr. Olson, we will turn to you.

**STATEMENT OF THEODORE B. OLSON, NOMINEE TO BE
SOLICITOR GENERAL OF THE UNITED STATES**

Mr. OLSON. Thank you, Mr. Chairman, Chairman Hatch, and members of this committee, for holding this hearing, especially at a time when so many other important matters are taking place in the U.S. Senate. I am also grateful to the many members of this Committee who took time out of their busy schedules during the past few days to meet with me. I think that is a very, very constructive process, and I enjoyed the opportunity to meet and talk with so many members of this committee.

I would like to take a moment and introduce members of my family. First of all, my wife and dearest friend, Barbara.

Chairman HATCH. Barbara, happy to have you here.

[Applause.]

Mr. OLSON. And I have two children. My daughter, Christine, lives in Arizona and could not be here, but my son and daughter-in-law, Ken and Laura Olson, and my three grandchildren about whom I could not be more proud—Haley and Gillian and Kirsten—are here today.

[Applause.]

Chairman HATCH. We welcome you. Beautiful grandchildren, I tell you.

Mr. OLSON. I think so, too.

Chairman HATCH. I am amazed.

[Laughter.]

Mr. OLSON. Part of that is attributable to my daughter-in-law.

I am also most grateful to Senators Warner and Nickles for introducing me today. And, of course, I am especially indebted to President Bush and Attorney General Ashcroft for the honor they have bestowed upon me in nominating me to serve as Solicitor General of the United States.

I am deeply touched to be here. I am very, very pleased to be here on the same panel with Larry Thompson. Larry and I first met many, many years ago at the first part of the Reagan administration where we both served in the Justice Department under President Reagan and Attorney General—who was my former partner—William French Smith. It was a wonderful experience, and I am looking forward, if we are both confirmed, to working together. This is a friendship and a professional relationship that I am very proud of.

I am also very touched and humbled by the nomination to serve my country as Solicitor General of the United States. I have immense respect for the inspiration and prescience of the Framers of our Constitution and for the miraculous Government that they created, particularly its ingenious system of separated powers. The creation of interrelated but separate branches of Government, including an independent judiciary, has made this country strong and kept its citizens free for over 200 years. The privilege of representing the United States in its courts, especially before the United States Supreme Court, is, in my judgment, one of the greatest and most gratifying and challenging positions that a lawyer could possibly dream about.

The Solicitor General holds a unique position in our Government in that he has important responsibilities to all three branches of our Government. He represents the legislative branch in the sense that he is the lawyer who defends laws enacted by this Congress in the Supreme Court of the United States. He is also the lawyer for the executive in that he represents the President in the Supreme Court in the discharge of the President's core responsibility, to take care that the laws of the United States are faithfully executed. And he is considered an officer of the Supreme Court in that he regularly and with scrupulous honesty must present to the Court arguments that are carefully considered and mindful of the Court's role, duty, and limited resources.

As the most consistent advocate before the Supreme Court, the Solicitor General and the lawyers in that office have a special obligation to inform the Court honestly and openly. The Solicitor General must be an advocate, but he must take special care that the positions he advances before the Court are fairly presented. As Professor Drew Days said to this Committee during his confirmation hearing 8 years ago, the Solicitor General has a duty toward the Supreme Court of "absolute candor and fair dealing."

Finally, and perhaps most importantly of all, the Solicitor General must always be mindful that he represents the people of the United States and their Government and that their interests must at all times be paramount and their Constitution protected and defended.

I know what a great responsibility the President has asked me to discharge. If I am confirmed, I will strive to live up to the standards of the outstanding individuals—some of whom were named by each of you, Mr. Chairman, Senator Leahy—who have served in this wonderful position in the past and to the fine men and women who work in the office of Solicitor General now and who have served in that office in the past. And I will endeavor at all times to keep in mind that those of us who serve in the Department of Justice have as our ultimate master the Constitution and the rule of law.

Thank you.

[Mr. Olson's biographical information follows:]

I.BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Theodore Bevry Olson

2. Address: List current place of residence and office address(es).

Residence: Great Falls, Virginia 22066

Office: Gibson, Dunn & Crutcher LLP
1050 Connecticut Avenue
Suite 900
Washington, D.C. 20036-5306

3. Date and place of birth.

9/11/40
Chicago, Illinois

4. Marital Status (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married. Barbara K. Olson (maiden name: Bracher) Lawyer, Balch & Bingham, LLP, 1275 Pennsylvania Avenue, 10th Floor, Washington, D.C. 20004. Author, "Hell to Pay: The Unfolding Story of Hillary Rodham Clinton," published 1999 by Regnery Publishing, Inc.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

University of the Pacific, Stockton, California; 9/58 to 6/62; BA, 6/62.
University of California at Berkeley, School of Law, Boalt Hall; 9/62 to 6/65; LLB, 6/65.

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Summer 1962: United States Postal Service, Los Altos, California, substitute letter carrier.
Summer 1963: Nobleman Interiors, Los Altos, California, sales and delivery assistant.

Summer 1964: Cravath, Swaine & Moore, New York, NY, summer law clerk.
 11/84 to present: Gibson, Dunn & Crutcher LLP, Washington, D.C., partner.
 2/81 to 10/84: United States Department of Justice, Assistant Attorney General, Office of Legal Counsel, Washington, D.C.
 6/65 to 2/81: Gibson, Dunn & Crutcher, Los Angeles, California. Associate from 1965 through 1971; partner from 1972 to February 1981.
 2/96 to 5/99: The American Spectator Educational Foundation Inc., Arlington, VA., member of the Board of Directors. Non-profit (501(C)(3)) Corporation. No compensation.

7. Military Service: Have you had any military service? If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Outstanding graduate: speech and debate, journalism; University of the Pacific.

Law School: Order of the Coif.

Member, California Law Review.

Department of Justice, Edmund J. Randolph Award, March 1984.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association; served as Delegate to the House of Delegates from the Administrative Law Section 8/91 to 8/94 and 8/96 to 8/99; served as Member, Standing Committee on Federal Judicial Improvements, 7/97 to 1999 (approx.); served as Member, Commission on Separation of Powers and an Independent Judiciary, 8/96 to 1998 (approx.); American Bar Association, Special Committee on Governmental Affairs 9/96 to 1999 (approx.); American Bar Association, Oral Argument Subcommittee of Appellate Practice Committee 8/95 to 1999 (approx.); ABA, Government Organization and Separation of Powers 8/95 to 1996 (approx.); American Bar Association, Just Solutions Steering Committee 2/94 to 1995 (approx.); American Bar Association, Congressional Process Committee 2/93 to 1995 (approx.); American Bar Association, Committee on Appellate Advocacy, 5/89 to 1992 (approx.) American Bar Association, Security Advisory Committee, 8/87 to 8/88.
 California State Bar Association, 1966 to present.
 District of Columbia Bar, 1982 to present.
 United States Supreme Court Bar, 1978 to present.

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

American Bar Association - does lobby before Congress.
The following organizations to which I belong do not engage in lobbying:

Fellow, American College of Trial Lawyers
Fellow, American Academy of Appellate Lawyers
Federalist Society
National Association of Former United States Attorneys
Republican National Lawyers Association

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

U.S. SUPREME COURT	MARCH 20, 1978
DISTRICT OF COLUMBIA COURT OF APPEALS	DECEMBER 21, 1982
CALIFORNIA SUPREME COURT	JANUARY 6, 1966

UNITED STATES COURTS OF APPEALS

SECOND CIRCUIT	FEBRUARY 3, 2000
THIRD CIRCUIT	MARCH 20, 1998
FOURTH CIRCUIT	APRIL 2, 1987
FIFTH CIRCUIT	APRIL 5, 1995
SIXTH CIRCUIT	JANUARY 25, 1999
EIGHTH CIRCUIT	FEBRUARY 22, 1993
NINTH CIRCUIT	JANUARY 18, 1974
TENTH CIRCUIT	FEBRUARY 22, 1993
ELEVENTH CIRCUIT	NOVEMBER 15, 2000
D.C. CIRCUIT	NOVEMBER 13, 1985
FEDERAL CIRCUIT	JANUARY 26, 1989

U.S. DISTRICT COURTS

SO. DISTRICT CALIFORNIA	SEPTEMBER 19, 1969
CENTRAL DISTRICT OF CALIFORNIA	JANUARY 1, 1966
NORTHERN DISTRICT OF CALIFORNIA	JANUARY 22, 1968

MISCELLANEOUS COURTS

U.S. COURT OF INTERNATIONAL TRADE	MAY 1, 1981
-----------------------------------	-------------

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

See Attachment A.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. Last physical: 9/26/00.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

(a) Member, California Commission on Uniform State Laws 1972-1974. Appointed by the Governor of California.

(b) Assistant Attorney General, Office of Legal Counsel, United States Department of Justice, March 1981 through October, 1984. Presidential appointment with the advice and consent of the Senate.

15. Legal Career:

- a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

No clerkships.

2. whether you practiced alone, and if so, the addresses and dates;

No solo practice.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

(a) Gibson, Dunn & Crutcher, current address: 333 So. Grand Avenue, Los Angeles, California, 90071 June 1965 to February 1981.
 (b) United States Department of Justice, Assistant Attorney General, Office of Legal Counsel, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, February 1981 to November 1984.
 (c) Gibson, Dunn & Crutcher LLP, 1050 Connecticut Avenue, N.W., Washington, D.C., 20036, November 1984 to present.

- b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

1965-67: general corporate.
 1967-1981: litigation -- trial and appellate, general commercial, media, entertainment, product liability, property rights, insurance, securities and constitutional law.
 1981-1984: Department of Justice, Office of Legal Counsel - Federal statutory and constitutional law.
 1984-2001: litigation -- constitutional, public policy and appellate.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

Financial institutions, hotels, energy companies, auditing and accounting professionals, publishers, paper and wood product industry, communications industry, insurance companies, automotive industry and various individuals.

I have represented these clients in connection with general commercial and constitution issues primarily in appellate courts.

- c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Occasionally. Mostly appellate courts, specifically federal appeals courts including the United States Supreme Court. Approximately 4 to 10 appearances per year.

During my early career, 1965 through 1980, I appeared regularly in appellate and trial courts in connection with the handling of trials, motions and appeals as often as 25-35 times per year.

2. What percentage of these appearances was in:
 - (a) federal courts ;
 - (b) state courts of record;
 - (c) other courts.

federal court: 70% (approx.)
state courts: 30% (approx.)

3. What percentage of your litigation was:
 - (a) civil;
 - (b) criminal.

civil: 90% (approx.)
criminal: 10% (approx.)

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

In the past 10-15 years I have concentrated my practice on appellate work; although I have occasionally done motions work in trial courts during that period. In the earlier portion of my career (1965-1981), I did do trial work and tried a small number of cases to verdict or judgment.

5. What percentage of these trials was:
 - (a) jury;
 - (b) non-jury.

Jury: 10% (approx.)
Non-jury: 90% (approx.)

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your

participation in the litigation and the final disposition of the case. Also state as to each case:

- (a) the date of representations;
- (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
- (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

Response: Points of view may differ with respect to what cases are the "most significant matters". I have listed below ten matters of significance that I have handled during my career, mostly U.S. Supreme Court cases. There are others that could be listed as highly significant as well since I have concentrated my practice on cases of importance in state and federal courts of appeal including the United States Supreme Court, but I have selected ten that involve relatively important issues of federal or constitutional law.

1. *Bush v. Gore*, No. 00-949, Supreme Court of the United States. Decided December 12, 2000. I was counsel of record for petitioners George W. Bush and Richard Cheney, responsible for preparing the petition for certiorari, briefs and presenting argument. This case challenged the legality/constitutionality of a Florida Supreme Court decision, under Art. II and Amendment XIV of the United States Constitution, as well as 3 U.S.C. § 5, which had ordered a partial statewide manual recount of ballots cast in Florida's November 7, 2000 presidential election. The Court upheld constitutional challenge on 14th Amendment grounds and reversed the Florida Supreme Court and remanded the case to that court for further proceedings not inconsistent with the judgment.

Dates of representation: November 7, 2000 to December 31, 2000

Name of Court and Judge/Judges: Supreme Court of the United States: Chief Justice William H. Rehnquist, Associate Justices John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy, David H. Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen G. Breyer

Co-counsel:

Douglas R. Cox
Thomas G. Hungar
Miguel Estrada
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/955-8500

Michael Carvin
Cooper, Carvin & Rosenthal, P.L.L.C.
1500 K Street, N.W., Suite 200
Washington, D.C.
202/220-9600

Co-counsel:

Barry Richard
Greenberg Traurig, P.A.
101 East Office Drawer 1838
Tallahassee, FL 32302
850/222-6891

Co-counsel:

Benjamin L. Ginsberg
Patton Boggs LLP
2550 M Street, N.W.
Washington, D.C. 20037
202/457-6000

Co-counsel:

George J. Terwilliger III
Timothy E. Flanigan
Marcos D. Jimenez
White & Case LLP
First Union Financial Center
200 South Biscayne Blvd.
Miami, FL 33131
305/371-2700

Co-counsel:

Professor John F. Manning
435 W. 116th Street
New York, NY 10027
212/854-8379

Co-counsel:

Professor William K. Kelley
Notre Dame Law School
Notre Dame, Indiana 46556
219/631-8646

Co-counsel: Professor Bradford R. Clark
2000 H Street, N.W.
Washington, D.C. 20052
202/994-2073

Co-counsel: Joseph P. Klock, Jr.
John W. Little, III
Thomas M. Karr
Alvin F. Lindsay III
Arthur R. Lewis, Jr.
Gabriel Nieto
Ricardo M. Martinez-Cid
Steel Hector & Davis LLP
200 S. Biscayne Blvd., Suite 4000
Miami, FL 33131-2938
850/222-2300

Other parties' counsel:
David Boies
Robert Silver
Boies, Schiller & Flexner
80 Business Park Drive
Suite 110
Armonk, NY 10504
914/273-9800

Professor Laurence H. Tribe
Hauser Hall 420
1575 Massachusetts Avenue
Cambridge, MA 02138
617/495-4621

Thomas C. Goldstein
Amy Howe
4607 Asbury Pl. NW.
Washington, D.C. 20016
(no phone number available)

Ronald A. Klain
O'Melveny & Myers
555 - 13th Street
Washington, D.C. 20004
202/383-5300

Andrew J. Pincus
Lowenstein Sandler PC
65 Livingston Avenue
Roseland, New Jersey 07068
973-597-2500

2. *Bush v. Palm Beach Canvassing Commission*, No. 00-836, Supreme Court of the United States. Decided December 4, 2000. I was counsel of record for Petitioner George Bush, responsible for preparing two petitions for certiorari, briefs and presenting argument. This case challenged the legality under federal statutory and constitutional law (3 U.S.C. § 5 and Art. II, Section 1, Clause 2 of the Constitution) (one of the two petitions raised due process and equal protection claims under the 14th Amendment that was denied without prejudice) of a Florida Supreme Court decision changing standards and deadlines for tabulating ballots in Florida's November 7, 2000 election of presidential electors. The Court unanimously rendered a decision based upon the constitutional provisions we advanced and vacated and remanded to the Florida Supreme Court for further proceedings.

Dates of representation: November 7, 2000 through December 31, 2000

Name of Court and Judge/Judges: Supreme Court of the United States:
Chief Justice William H. Rehnquist, Associate Justices John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy, David H. Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen G. Breyer

Co-counsel:

Terence P. Ross
Douglas R. Cox
Thomas G. Hungar
Mark A. Perry
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/955-8500

Michael Carvin
Cooper, Carvin & Rosenthal, P.L.L.C.
1500 K Street, N.W., Suite 200
Washington, D.C.
202/220-9600

Co-counsel: Barry Richard
 Greenberg Traurig, P.A.
 101 East Office Drawer 1838
 Tallahassee, FL 32302
 850/222-6891

Co-counsel: Benjamin L. Ginsberg
 Patton Boggs LLP
 2550 M Street, N.W.
 Washington, D.C. 20037
 202/457-6000

Co-counsel: George J. Terwilliger III
 Timothy E. Flanigan
 Marcos D. Jimenez
 White & Case LLP
 First Union Financial Center
 200 South Biscayne Blvd.
 Miami, FL 33131
 305/371-2700

Co-counsel: Professor John F. Manning
 435 W. 116th Street
 New York, NY 10027
 212/854-8379

Co-counsel: Professor William K. Kelley
 Notre Dame Law School
 Notre Dame, Indiana 46556
 219/631-8486

Co-counsel: Professor Bradford R. Clark
 2000 H Street, N.W.
 Washington, D.C. 20052
 202/994-2073

Other parties' counsel:
 Professor Laurence H. Tribe
 Hauser Hall 420
 1575 Massachusetts Avenue
 Cambridge, MA 02138
 617/495-4621

Teresa Wynn Roseborough
 999 Peachtree Street, NE
 Atlanta, GA 30309-3996
 404/853-8100

David Boies
Boies, Schiller & Flexner
80 Business Park Drive, Suite 110
Armonk, NY 10504
914/273-9800

Ronald A. Klain
O'Melveny & Myers
555 - 13th Street
Washington, D.C. 20004
202/383-5300

Andrew J. Pincus
Lowenstein Sandler PC
65 Livingston Avenue
Roseland, New Jersey 07068
973/597-2500

Peter J. Rubin
Georgetown Univ. Law Center
600 New Jersey Avenue, NW
Washington, D.C. 20001
202/662-9000

Kendall Coffey
Coffey Diaz & O'Naghten
2665 South Bayshore Drive
Miami, FL 33133
305/285-0800

Thomas C. Goldstein
Jonathan S. Massey
Amy Howe
4607 Asbury Place, N.W.
Washington, D.C. 20016
(no phone number available)

3. Rice v. Cayetano, No. 98-818, Supreme Court of the United States. Decided February 23, 2000. I was counsel of record for Mr. Rice, the prevailing party, responsible for preparing a petition for certiorari, briefs and presenting argument, in this case in which the Court struck down as a violation of the Fifteenth Amendment Hawaiian legislation restricting voting in certain elections to citizens based on racial classifications.

Dates of representation: October 1998 to February 2000

Name of Court and Judge/Judges: Supreme Court of the United States:
Chief Justice William H. Rehnquist, Associate Justices John Paul
Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy,
David H. Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen G.
Breyer

Co-counsel: Douglas R. Cox
Thomas G. Hungar
David B. Salmons
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/955-8500

John W. Goemans
P.O. Box 98
Kamuela, Hawaii 96743
202/255-5900

Other parties' counsel:
John G. Roberts, Jr.
Hogan & Hartson, L.L.P.
555 Thirteenth Street, N.W.
Washington, D.C. 20004
202/637-5810

Earl I. Anzai
Attorney General
Girard D. Lau
Dorothy Sellers
Charleen M. Aina
Deputy Attorneys General
425 Queen Street
Honolulu, Hawaii 96813
808/586-1360

Seth P. Waxman
Solicitor General
Edwin S. Kneeder
Department of Justice
Washington, D.C. 20530-0001
Current for S. Waxman: 202/662-9912

4. *Vermont Agency of Natural Resources v. United States*, 98-1828,
Supreme Court of the United States. Argued November 29, 1999. I was
counsel of record for the *qui tam* in this Federal False Claims Act,

qui tam, case, responsible for briefing and argument, which involved the questions of Article III standing of *qui tam* plaintiffs, whether a State may be a defendant in such an action, and whether the State is immune from such suits under the Eleventh Amendment. The Court upheld the plaintiff's standing, concluded that the Federal False Claims Act did not permit suits against states and did not reach the Eleventh Amendment issue.

Dates of representation: July 1999 to May 2000

Name of Court and Judge/Judges: Supreme Court of the United States:
Chief Justice William H. Rehnquist, Associate Justices John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy, David H. Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen G. Breyer

Co-counsel:

Thomas G. Hungar
Miguel A. Estrada
David B. Salmons
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/955-6500

Seth P. Waxman
Solicitor General
Department of Justice
Washington, D.C. 20530-0001
Current for S. Waxman: 202/662-9912

Stephen J. Soule
Matthew E. C. Pifer
Mark G. Hall
Paul, Frank & Collins, Inc.
P.O. Box 1307
Burlington, VT 05402
802/658-2311

Other parties' counsel:

J. Wallace Malley, Jr.
Deputy Attorney General
State of Vermont
109 State Street
Montpelier, VT 05609-1001
802/828-3198

5. *Gasperini v. The Center for Humanities, Inc.*, Supreme Court of the United States, 116 S.Ct. 2211 (1996). The Court held that the Seventh Amendment permits federal appellate courts in diversity cases to review jury verdicts for excessiveness and that state rather than federal standards govern the scope of excessiveness review of such verdicts. I was counsel of record for prevailing respondent, Center for Humanities, through its insurer, responsible for briefing and argument.

Dates of representation: February, 1996 to June 24, 1996

Name of Court and Judge/Judges: Supreme Court of the United States:
Chief Justice William H. Rehnquist, Associate Justices John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy, David H. Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen G. Breyer

Co-counsel:

Theodore J. Boutrous, Jr.
Douglas R. Cox
Mark Snyderman
Rebecca A. Womeldorf
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/955-8500

Francis A. Montbach
Bigham, Englar, Jones & Houston
14 Wall Street
New York, NY 10005
212/732-4646

Other parties' counsel:

Jonathan S. Abady
Beldock Levine & Hoffman LLP
99 Park Avenue
New York, NY 10016
212/490-0400

6. *United States of America v. Commonwealth of Virginia, et al.*; *Commonwealth of Virginia, et al. v. United States of America*, Supreme Court of the United States, 116 S.Ct. 2264 (1996). This case involved the question whether Virginia Military Institute male-only admissions policy violated the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States. I was counsel of record for the Commonwealth of Virginia and Virginia Military

Institute, responsible for briefing and argument. The Court found that the single-sex admissions policy violated the Equal Protection Clause.

Dates of representation: August, 1994 to June 26, 1996

Name of Court and Judge/Judges: Supreme Court of the United States:
Chief Justice William H. Rehnquist, Associate Justices John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy, David H. Souter, Ruth Bader Ginsburg, Stephen G. Breyer;
Associate Justice Clarence Thomas took no part in the consideration or decision in this case.

Co-counsel:

Thomas G. Hungar
D. Jarrett Arp
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/955-8500

James S. Gilmore, III
Attorney General of Virginia
William H. Hurd
Deputy Attorney General
900 East Main Street
Richmond, VA 23219
804/786-2071

Griffin B. Bell
William A. Clineburg, Jr.
King & Spalding
191 Peachtree Street
Atlanta, GA 30303
404/572-4600

Robert H. Patterson, Jr.
Anne Marie Whitemore
William G. Broaddus
J. William Boland
McGuire, Woods, Battle & Boothe
One James Center
Richmond, VA 23219
804/775-1061

Other parties' counsel:

Drew S. Days, III
Solicitor General
Paul Bender
Deputy Solicitor General
Department of Justice
Washington, D.C. 20530
Current for D. Days: 203/432-4948

7. *Plaut, et al., v. Spendthrift Farms*, 115 S.Ct. 1447 (1995). The Court struck down as unconstitutional on separation of powers grounds a federal statute requiring federal courts to reopen final judgments in cases dismissed with prejudice on statute of limitations grounds pursuant to Supreme Court's decision in *Lampf, Pleva v. Gilbertson*, 501 U.S. 350 (1991). I was counsel of record for successful petitioners, *Spendthrift Farms, et al.* responsible for briefing and argument.

Dates of representation: August 11, 1994 to April 18, 1995

Name of Court and Judge/Judges: Supreme Court of the United States:
Chief Justice William H. Rehnquist, Associate Justices John Paul Stevens, Sandra Day O'Connor, Antonin Scalia, Anthony M. Kennedy, David H. Souter, Clarence Thomas, Ruth Bader Ginsburg, Stephen G. Breyer

Co-counsel: Barbara B. Edelman
Barry Friedman
Wyatt, Tarant & Combs
1700 Lexington Financial Center
250 West Main Street
Lexington, KY 40507
606/233-2012

Other parties' counsel:
William W. Allen
Gess Mattingly & Atchison, P.S.C.
201 West Short Street
Lexington, KY 40507
606/255-2344

Drew S. Days, III
Solicitor General
Michael R. Dreeben
Assistant to the Solicitor General
Department of Justice
Washington, D.C.
Current for D. Days: 203/432-4948

8. *Lampf, Pleva, Lipkind, Prupis & Petigrow v. Gilbertson*, 501 U.S. 350 (1991). Federal courts must apply federal securities law one year/three year statute of limitations rather than the state statutes of limitations in cases arising under § 10(b) of the Securities Exchange Act of 1934. I was counsel of record for the successful petitioners, responsible for briefing and argument.

Dates of representation: October 23, 1990 to June 20, 1991
Name of Court and Judge/Judges: Supreme Court of the United States:
Chief Justice William H. Rehnquist, Associate Justices Byron R. White,
Thurgood Marshall, Harry A. Blackmun, John Paul Stevens, Sandra Day
O'Connor, Antonin Scalia, Anthony M. Kennedy, David H. Souter.

Co-counsel:

John H. Sturc
Theodore J. Boutrous, Jr.
Gibson, Dunn & Crutcher
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036
202/955-8500

S. Joel Wilson
R. Daniel Lindahl
Bullivant, Houser, Bailey, Pendergrass & Hoffman
1400 Pacwest Center
1211 S.W. Fifth Avenue
Portland, OR 97204
503/228-6351

Other parties' counsel:

Kenneth W. Starr
Solicitor General
John G. Roberts, Jr.,
Deputy Solicitor General
Department of Justice
Washington, D.C. 20530
Current for K. Starr: 202/879-5130

F. Gordon Allen, III
 Allen, Kilmer, Schrader, Yazbeck,
 & Chenoweth, P.C.
 1600 Security Pacific Plaza
 1001 S.W. Fifth Avenue
 Portland, Oregon 97204
 503/224-0055

9. *Aetna Life Insurance Co. v. Lavoie*, 475 U.S. 813, (1986). This case involved constitutionality under the Eighth Amendment Excessive Fines Clause, the Contracts Clause, and the Fourteenth Amendment Due Process Clause of a \$3.5 million Alabama punitive damage judgment. I was counsel of record for Aetna, the prevailing party, responsible for preparing appeal briefs, merits briefs and presenting argument.

Dates of representation: December, 1984 through July, 1986.
 Name of Court and Judge/Judges: Supreme Court of the United States, Chief Justice Warren E. Burger, Associate Justices William J. Brennan, Byron R. White, Thurgood Marshall, Harry A. Blackmun, Lewis F. Powell, William H. Rehnquist, Sandra Day O'Connor. Associate Justice John Paul Stevens took no part in the consideration or decision of this case.

Co-counsel: John J. Swenson
 Larry L. Simms
 Gibson, Dunn & Crutcher
 1050 Connecticut Avenue, N.W.
 Washington, D.C. 20036
 202/955-8500

Peter V. Sintz
 William M. Cunningham, Jr.
 Sintz, Campbell, Duke, Taylor & Cunningham
 3763 Professional Parkway
 Mobile, Alabama 36609
 (205) 344-7241

Other parties' counsel:
 Jack N. Goodman
 Robert J. Aamoth
 Pierson, Ball & Down
 1200 18th Street, N.W.
 Washington, D.C. 20036
 202/331-8566

Alvin T. Prestwood
Suite 209
One Court Square
Montgomery, Alabama 36104
205/832-4120

Joseph M. Brown, Jr.
Cunningham, Bounds, Yancey, Crowder & Brown
1601 Dauphin Street
Mobile, Alabama 36660
205/471-6191

10. *Cellular Telecommunications Industry Association, et al. v. Federal Communications Commission*, No. 99-1475, United States Court of Appeals for the District of Columbia Circuit. Argued May 17, 2000. This petition challenged an order of the Federal Communications Commission involving surveillance capabilities that telecommunications companies must provide to law enforcement agencies under the Communications Assistance for Law Enforcement Act. I was lead counsel for the Cellular Telecommunications Industry Association and the Center for Democracy and Technology, responsible for preparing complaint, briefs and presenting oral argument.

Dates of representation: 12/99 to 9/00

Name of Court and Judge/Judges: United States Court of Appeals for the District of Columbia Circuit. Judges Douglas H. Ginsburg, A. Raymond Randolph and David S. Tatel

Co-counsel:

John H. Harwood II
Lynn R. Charytan
Samir Jain
Wilmer, Cutler & Pickering
2445 M Street NW
Washington, D.C. 20037
(202) 663-6000

Stewart A. Baker
Thomas M. Barba
Matthew L. Stennes
Steptoe & Johnson, LLP
1330 Connecticut Avenue, NW
Washington, D.C. 20036
202/429-3000

Michael Altschul
Cellular Telecommunications Industry Association
1250 Connecticut Avenue NW, Suite 800
Washington, D.C. 20036
(202) 785-0081

Jerry Berman
James X. Dempsey
Center for Democracy and Technology
1634 Eye Street NW, Suite 1100
Washington, D.C. 20006
(202) 637-9800

Lawrence E. Sarjeant
Linda L. Kent
Keith Townsend
John W. Hunter
Julie E. Rones
United States Telecom Association
1401 H Street, Suite 600
Washington, D.C. 20036
(202) 326-7248

Kur A. Wimmer
Gerald J. Waldron
Russell Jessee
Margaret Glebe
Covington & Burling
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20044-7566
202/662-6000
Albert Gidari
Box 19592
Bainbridge Island, WA 98110
202/842-3690

Andre Williams
Assistant General Counsel
Cellular Technology Industry Association
202/736-3200

Other parties' counsel:

Scott R. McIntosh
Douglas N. Letter
United States Department of Justice
Civil Division/Appellate Staff
Room 9550 PHB
801 D Street, NW
Washington, D.C. 20530
202/514-4052

John E. Ingle
Federal Communications Commission
445 Twelfth Street, SW
Room 8-B201
Washington, D.C. 20554
202/418-1746

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived.)

My most significant legal activities have involved representation of clients before courts, and those have been described, in part, in the response to the preceding questions. These include many appellate cases in federal and state courts. I list two examples below of other significant legal work which involved advice, counseling and other services that extended beyond the courtroom.

1. For several years, on behalf of various clients, I have supported reforms in the civil justice system, particularly in the area of punitive damages. My work in this regard has included handling appeals, writing and speaking, congressional testimony (copies of testimony supplied in response to question 12) and commenting on proposed legislation.
2. Auditor Independence. My firm and I represented three large accounting firms and the AICPA in responding to the SEC's proposed rulemaking changes involving auditor independence. My work involved legal analysis, preparation for potential legal challenge to the proposed rule, guidance on media and legislative strategy and general strategic consultation.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

If I am confirmed, I will retire from my law firm. I will receive partnership compensation from the firm for the months during the year 2001 until such confirmation based upon my partnership shares calculated according to (annualized) 2000 per share partnership income, which will amount to approximately \$120,000 per month. I will receive a return of capital that I have invested in the firm, approximately \$735,000 and a return of funds withheld as an insurance reserve, approximately \$94,000. I will be allowed to maintain my interest in the firm's Keogh plan. As a retired former partner I will receive a fixed retirement benefit in the amount of approximately \$25,000 per month. I invested in Gibson, Dunn & Crutcher 2000 Fund, LLC (\$30,000) and will be paid my share of any return for that investment when the investments made by that fund are liquidated in the ordinary course.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

I will consult with appropriate Department of Justice ethics officials and rules and act according to those rules. I will not pursue any outside employment during my Justice Department service in the position for which I have been nominated. I will also consult with Department ethics officials with respect to any matter involving my former firm or clients or my wife's law firm.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding \$500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

Copy of financial disclosure form filed with the Department of Justice Office of Government Ethics attached hereto.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

I have made campaign contributions and performed miscellaneous service for candidates from time to time. The only formal political campaign positions I can recall are the following:

1. Alternate Delegate, Republican National Convention, 1976.
2. Delegate, Republican National Convention, 1980.
3. Chairman, Lawyers for Reagan-Bush, 1980.
4. Counsel to Platform Committee, Republican National Convention, 1992.
5. National Co-Chair, Lawyers for Bush-Cheney, 2000.
6. Co-chair, Ethics Consultant, Republic National Convention, 2000.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

(a) I have devoted time to service in various capacities for the ABA and other legal organizations (see Model Rule 6.1) including the Washington Legal Foundation, the National Legal Center for the Public Interest, the Federalist Society, the Center for Individual Rights, and the U.S. Ukraine Foundation. This has included speaking, writing, and, on a few occasions, amicus briefs. I have occasionally participated in moot courts put on by the National Association of Attorneys General and the National State and Local Legal Center.

(b) I have served as counsel of record since 12/94 for Cheryl Hopwood and Douglas W. Carvell along with the Center for Individual Rights in connection with their claim that they were the victims of racial discrimination at the law school of the University of Texas. While my firm has filed a claim for legal fees, as it is entitled to under federal law, the representation was undertaken without any expectation that we would be reimbursed for our services unless we were successful and if a court were to award fees. I spent hundreds of hours on that representation in which our clients' claims were upheld by the United States Court of Appeals for the Fifth Circuit.

(c) I have served as counsel to Harold Rice who asserted claims based on the Fourteenth and Fifteenth Amendments against the State of Hawaii. Those claims were upheld by the United States Supreme Court in the case referred to in item (3) of my response to Question 16 in Part I. While my firm has a claim for legal fees pending in federal court as permitted by federal law, which has now been settled (although fees have not yet been paid), the matter was undertaken with no expectation that fees would be paid unless awarded by a court if we were successful and if a court were to approve fees. I spent hundreds of hours on that matter. Represented: October 1998 to February 2000

(d) In connection with the U.S. Ukraine Foundation, I have spoken about law, the American Constitution and American legal and governmental institutions to visiting Ukraine government dignitaries. I also participated, along with former Senate Legal Counsel Michael Davidson and others, in a several-day joint symposium on the proposed new Ukraine Constitution in Kiev in the mid-1990's.

(e) I have volunteered from time to time to provide legal advice and other forms of support to candidates for political office. I have not attempted to keep records of the time spent doing this.

(f) On occasion I have provided advice to congressional committees on various legal/constitutional matters. I have not kept records reflecting such activities.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

No.



U.S. Department of Justice

Washington, D.C. 20530

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

MP 14 200

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Theodore B. Olson who has been nominated by the President to serve as Solicitor General of the United States. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Mr. Olson recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests. Because of his interest in the Gibson, Dunn and Crutcher Partners Retirement Plan, we have asked him to seek advice before participating in matters involving the firm. Also, because his wife has a financial interest in the law firm of Balch and Bingham based on her partnership status, he should seek advice before participating in any matter in which the firm has a financial interest. Pursuant to his partnership agreement with his law firm, he will receive a full return of his capital account and his insurance reserve. Also, the firm will return to him the portion of his contributions to the GD&C Partners 2000 Fund that were not invested in the fund. He will retire from the firm after confirmation but prior to appointment as Solicitor General and will receive these payments within 90 days of his retirement.


Ms. Amy L. Comstock

Page 2

We have advised him that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter having specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship is or represents a party. He will have a covered relationship with his former clients and his wife's clients. If confirmed, Mr. Olson has agreed to resign from his positions with the non-profit organizations listed on Schedule D of the enclosed report upon appointment by the President. He understands that for one year he should seek advice before participating in matters involving any of these organizations.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,



Stephen R. Colgate
Assistant Attorney General
for Administration
and Designated Agency Ethics Official

Enclosure

February 28, 2001

ASSETS			LIABILITIES		
Cash on hand and in banks	238	000 00	Notes payable to banks—secured		
U.S. Government securities—add schedule			Notes payable to banks—unsecured		
Listed securities—add schedule	1,081	300 00	Notes payable to relatives		
Unlisted securities—add schedule			Notes payable to others		
Accounts and notes receivable:			Accounts and bills due		
Due from relatives and friends			Unpaid income tax		
Due from others			Other unpaid tax and interest		
Doubtful			Real estate mortgages payable—add schedule	875	000 00
Real estate owned—add schedule	2,800	000 00	Chattel mortgages and other liens payable		
Real estate mortgages receivable			Other debts—itemize:		
Leases and other personal property	200	000 00			
Cash value—life insurance				30	000 00
Other assets—itemize:					
Attached	1,863	000 00			
			Total liabilities	905	000 00
			Net worth	5,277	300 00
Total assets	6,182	300 00	Total liabilities and net worth	6,182	300 00
CONTINGENT LIABILITIES	None		GENERAL INFORMATION		
As endorser, cosigner or guarantor			Are any assets pledged? (Add schedule.)	No	
On leases or contracts			Are you defendant in any suits or legal actions?	No	
Legal Claims			Have you ever taken bankruptcy?	No	
Provision for Federal Income Tax					
Other special debt					

REAL ESTATE

1. Residence: Great Falls, VA

 Approximate Value: \$2,200,000
2. Land and vacation residence:
 Ellison Bay, Wisconsin

 Approximately Value: \$ 600,000

SECURITIES/INVESTMENTS

1.	Gibson, Dunn & Crutcher Fund	\$60,000.
2.	Caucus Room	\$25,000.
3.*	Janus Fund	\$29,000
4.*	Janus Venture Fund	\$27,000
5.*	American Century Growth	\$36,000
6.*	American Century Select	\$ 58,000
7.*	American Century Ultra	\$ 47,000
8.*	American Century Value	\$ 76,000
9.*	American Century Vista	\$ 36,000
10.*	American Century Veedot	\$ 13,000
11.*	T. Rowe Price Tax Free High Yield	\$ 97,000
12.*	T. Rowe Price Equity Income	\$ 35,000
13.*	Fidelity Spartan Muni Income	\$ 68,000
14.*	Fidelity Spartan Money Market	\$ 46,000
15.*	Fidelity Spartan Government	\$ 21,000
16.*	Fidelity Magellan	\$ 33,000
17.*	Mutual Shares	\$111,000
18.*	Mutual Beacon	\$280,000
19.*	American Century Capital Preservation	\$ 8,300
20.*	American Century Intermediate Term Treasury	\$ 12,500
21.*	American Century Short Term Treasury	\$ 8,300
22.*	American Century Long Term Treasury	\$ 8,500

23.*	American Century Global Gold	\$	4,300
24.*	Schlumberger (10 shares)	\$	700
25.*	Cisco (30 shares)	\$	700
TOTAL			\$1,081,300

*Values as of 12/31/00 or most current report received since that date.

OTHER ASSETS

Gibson, Dunn & Crutcher Keogh	\$1,036,000
Gibson, Dunn & Crutcher Capital Account	\$ 735,000
Gibson, Dunn & Crutcher Insurance Reserve	\$ 92,000
Gibson, Dunn & Crutcher Fund 2000 LLC	\$ 30,000
 TOTAL	 \$1,893,000

70162080_1.DOC

U.S. OF GOVERNMENT PRINTING OFFICE

Supersedes Prior Editions, Which Cannot Be Used.

SCHEDULE A

Page Number 2

2 / 10

BLOCK A		BLOCK B										BLOCK C										Date (Mo./Yr.)									
Assets and Income		Valuation of Assets at close of reporting period.										Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.										Other Income (Specify Type & Actual Amount)									
												Type	Amount																		
		None (or less than \$1,000)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	Over \$1,000,000 *	Over \$1,000,001 - \$5,000,000	Over \$5,000,001 - \$50,000,000	Over \$50,000,001 - \$500,000,000	Exempted Investment Fund	Excepted Trust	Dividends	Rent and Royalties	Capital Gains	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,001 - \$5,000,000 *	Over \$5,000,001 - \$50,000,000	Over \$50,000,001 - \$500,000,000	Over \$500,000,001 - \$5,000,000,000			
Note	<input type="checkbox"/>													X						X										1,000,000	
Examples																															
1	Ginsson, Dunn & Crutcher Washington, D.C. Partnership Income																														
2	Benham Capital Preservation Fund																														
3	Benham Gold Equities Fund																														
4	Benham Long Term Treasury Fund																														
5	Benham Short Term Fund																														
6	Benham Intermediate Treasury Note Fund																														

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

or Editions Cannot Be Used.

Sales Office: Cancer Be Killed

Reporting Individual's Name

Olson, Thendara B.

SCHEDULE A continued
(Use only if needed)

Olson, Thendara B.

Page Number 4 / 10

BLOCK A		BLOCK B		BLOCK C	
Assets and Income		Valuation of Assets at close of reporting period.		Income: type and amount. If "None (or less than \$20.)" is checked, no other entry is needed in Block C for that item.	
		BLOCK B		BLOCK C	
		None (or less than \$1,001)	\$1,001 - \$15,000	Type	Amount
14	T. Rowe Price Tax Free High Yield Fund			Dividends	
17	American Century Growth Fund			Interest	
18	American Century Select Fund			Rent and Royalties	
19	American Century Ultra Fund			Capital Gains	
20	American Century Value Fund			None (or less than \$20)	
21	American Century Vista Fund			\$201 - \$1,000	
22	American Century Vesdel Fund			\$1,001 - \$2,500	
23	GD&C Partners 2000 Fund, LLC			\$2,501 - \$5,000	
24	Affionce (Chase HC)(sold)			\$5,001 - \$15,000	
				\$15,001 - \$50,000	
				\$50,001 - \$100,000	
				\$100,001 - \$1,000,000	
				Over \$1,000,000 *	
				Over \$5,000,000	
				Over \$10,000,000	
				Over \$50,000,000	
				Over \$100,000,000	
				Over \$500,000,000	
				Over \$1,000,000,000	
				Over \$5,000,000,000	
				Over \$10,000,000,000	
				Over \$50,000,000,000	
				Over \$100,000,000,000	
				Over \$500,000,000,000	
				Over \$1,000,000,000,000	
				Over \$5,000,000,000,000	
				Over \$10,000,000,000,000	
				Over \$50,000,000,000,000	
				Over \$100,000,000,000,000	
				Over \$500,000,000,000,000	
				Over \$1,000,000,000,000,000	
				Over \$5,000,000,000,000,000	
				Over \$10,000,000,000,000,000	
				Over \$50,000,000,000,000,000	
				Over \$100,000,000,000,000,000	
				Over \$500,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$1,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$5,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$10,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$50,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$100,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$500,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000,000	
				Over \$1,000	
				Over \$5,000	
				Over \$10,000	
				Over \$50,000	
				Over \$100,000	
				Over \$500,000	
				Over \$1,000	
				Over \$5,000	
				Over \$10,000	
				Over \$50,000	
				Over \$100,000	
				Over \$500,000	
				Over \$1,000	
				Over \$5,000	
				Over \$10,000	
				Over \$50,000	
				Over \$100,000	
				Over \$500,000	
				Over \$1,000	
				Over \$5,000	
				Over \$10,000	
				Over \$50,000	
				Over \$100,000	
				Over \$500,000	
				Over \$1,000	
				Over \$5,000	
				Over \$10,000	
				Over \$50,000	
				Over \$100,000	
				Over \$500,000,000,000	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by both filers with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Don't Let Your Channel Be Used

SCHEDULE A continued
(Use only if needed)

Assets and Income	BLOCK B Valuation of Assets at close of reporting period.												BLOCK C Income: type and amount. If "None (or less than \$20)" is checked, no other entry is needed in Block C for that item.											
	BLOCK B Valuation of Assets at close of reporting period.												BLOCK C Income: type and amount. If "None (or less than \$20)" is checked, no other entry is needed in Block C for that item.											
BLOCK A	BLOCK B												BLOCK C											
	BLOCK B												BLOCK C											
	None (or less than \$1,001)	\$1,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$250,000	\$250,001 - \$500,000	\$500,001 - \$1,000,000	\$1,000,001 - \$25,000,000	\$25,000,001 - \$50,000,000	Over \$50,000,000	None (or less than \$201)	\$201 - \$1,000	\$1,001 - \$2,500	\$2,501 - \$5,000	\$5,001 - \$15,000	\$15,001 - \$50,000	\$50,001 - \$100,000	\$100,001 - \$1,000,000	Over \$1,000,000 *	\$1,000,001 - \$5,000,000	Over \$5,000,000	Other Income (Specify Type & Amount)	Date (Mo., Day, Yr.)	
11 Gibson, Dunn & Crutcher (Return of Capital)																								
12 Gibson, Dunn & Crutcher (Insurance Fund)																								
13 2215 Brandard, Houston, TX sold 2000 (spouse)																								
14 7218-7221 Hamletburg, Houston, TX sold 2000 (spouse)																								
15 3401 Sparks, Houston, TX sold 2000 (spouse)																								
16 4118 Topping, Houston, TX sold 2000 (spouse)																								
17 6418 & Blugham, 1215 Pleasant/Vanilla, Washington, D.C. (spouse)																								
18 Entertainment Partners ("Politically Incorrect") Los Angeles, CA (spouse)																								
19 Eagle Publishing, Inc., Wash, D.C. (spouse)(sister) (value not ascertainable)																								

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Filer Refers to Current Use

U.S. OF Government Ethics Rep. & Individual's Name Olson, Theodore B.		Page Number 7 / 10	
SCHEDULE A continued (Use only if needed)			
Assets and Income BLOCK A		Valuation of Assets at close of reporting period. BLOCK B	
		None (or less than \$1,001)	
		BLOCK C	
		Income: type and amount. If "None (or less than \$201)" is checked, no other entry is needed in Block C for that item.	
		BLOCK C	
		Type	
		Amount	
		Other Income (Specify Type & Amount)	
		Date (Mo., D., Yr.) Only if Honoree	
		Over \$5,000,000	
		\$1,000,001 - \$5,000,000	
		Over \$1,000,000	
		\$100,001 - \$1,000,000	
		\$50,001 - \$100,000	
		\$15,001 - \$50,000	
		\$5,001 - \$15,000	
		\$2,501 - \$5,000	
		\$1,001 - \$2,500	
		\$201 - \$1,000	
		None (or less than \$201)	
		Capital Gains	
		Interest	
		Rents and Royalties	
		Dividends	
		Qualified Trust	
		Excepted Trust	
		Excepted Investment Fund	
		Over \$50,000,000	
		\$25,000,001 - \$50,000,000	
		\$5,000,001 - \$25,000,000	
		\$1,000,001 - \$5,000,000	
		Over \$1,000,000	
		\$500,001 - \$1,000,000	
		\$250,001 - \$500,000	
		\$100,001 - \$250,000	
		\$50,001 - \$100,000	
		\$15,001 - \$50,000	
		\$1,001 - \$15,000	
		None (or less than \$1,001)	
Olson, Theodore B. & Crutcher Keogh Plan (as follows in 44, 45 and 46)			
General Gov't Securities Money Market Fund, Class A			
T. Rowe Price Balanced Fund			
Dryfus Appreciation Fund, Inc.			
Baich & Bingham LLP Retirement Plan (spouse) (as follows in 48, 49)			
Money Purchase Pension Plan			
Profit Sharing Plan			

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Please Follow General B-10-01

5 C.F.R. Part 1434
U.S. Office
Report on individual's Name
Olsen, Theodore B.

Page Number
9 / 10

SCHEDULE C

Part I: Liabilities
Report liabilities over \$10,000 owed to any one creditor at any time during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. Exclude accounts.

Part II: Agreements or Arrangements
Report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401K, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits.

Creditor (Name and Address)		Type of Liability	Date Incurred	Interest Rate	Term if applicable	Category of Amount or Value (e)																		
Examples	First District Bank, Washington, DC John Jones, 123 1st, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.	\$10,000	\$15,000	\$20,000	\$25,000	\$30,000	\$35,000	\$40,000	\$45,000	\$50,000	\$55,000	\$60,000	\$65,000	\$70,000	\$75,000	\$80,000	\$85,000	\$90,000	\$95,000	\$100,000
1	Neiman Marcus, Dallas, Texas	Department store, credit card	2000	26.5%	On demand																			
2	United Bank, Washington, D.C.	Credit line	2000	8.1 percent	One year																			
3																								
4																								
5																								

* This category applies only if the underlying liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Examples	Status and Terms of any Agreement or Arrangement	Parties	Date
1	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/01.	Doe Janet A. Smith, Hometown, State	7/85
2	Partnership Agreement return of capital - pursuant to partnership agreement, capital investment and insurance reserve will be returned in full upon retirement.	Gibson, Dunn & Crutcher 333 So. Grand Avenue, Los Angeles, CA	11/84
3	Partnership Hedge Plan - Participation will be forfeited, but new contributions will not be permitted.	Gibson, Dunn & Crutcher 333 So. Grand Avenue, Los Angeles, CA	11/84
4	Partnership Retirement Plan - Fixed contributions on 100% earnings, per partnership agreement.	Gibson, Dunn & Crutcher 333 So. Grand Avenue, Los Angeles, CA	11/84
5	GD&C Partners 2000 Fund LLC - contributions not invested in the Fund will be returned and no future contributions will be permitted.	Gibson, Dunn & Crutcher 333 So. Grand Avenue, Los Angeles, CA	02/00
6			

Prior Edition Cancelled By Law.

14:08 11/11/2001

Reporting Individual's Name Olson, Theodore B.		SCHEDULE D		Page Number 10 / 10
Part I: Positions Held Outside U.S. Government Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.				
None <input type="checkbox"/>				
Organization (Name and Address)	Type of Organization	Position Held	From (Mo./Yr.) To (Mo./Yr.)	
Example: Neil Aspin of Rock Collectors, NY, NY Doc Jones & Smith, Hometown, State	Non-profit education Law firm	President Partner	6/92 7/83	Present 1/00
1. Federalist Society, Washington, D.C. (will resign upon appointment)	Non-profit education	President, D.C. Chapter, Lawyers Division	12/91	present
2. Federalist Society, Washington, D.C. (will resign upon appointment)	Non-profit education	Board of Visitors	01/99	present
3. The National Legal Center for the Public Interest, Washington, D.C. (will resign upon appointment)	Non-profit law and education	Legal Advisory Board	03/97	present
4. The Washington Legal Foundation, Washington, D.C. (will resign upon appointment)	Non-profit law and education	Legal Advisory Board	08/99	present
5. Independent Women's Forum The American Spectator Educational Foundation	Non-profit education Non-profit education	Advisory Board Board of Directors	10/95 2/96	8/99 5/99
6. Olson, Quinn & Childers (will resign after confirmation and prior to appointment)	Law firm	Partner	11/84	Present
Part II: Compensation in Excess of \$5,000 Paid by One Source Report sources of more than \$5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other source. Do not complete this part if you are an incumbent, termination filer, or Vice Presidential or Presidential Candidate.				
Source (Name and Address)		None <input type="checkbox"/>		
Examples: Doc Jones & Smith, Hometown, State Metro University (Client of Doc Jones & Smith), Hometown, State				
1. SEE ATTACHED (listed are clients of Olson, Quinn & Childers who paid fees for my legal services.)				
2.				
3.				
4.				
5.				
6.				

Attached list of clients of Theodore B. Olson

Gibson, Dunn & Crutcher, Los Angeles, CA
 Mirage Resorts, Incorporated, Las Vegas, NV
 Caesar's World, Las Vegas, NV
 Circus Circus Development Corporation (Mandalay), Las Vegas, NV
 Sahara Hotel & Casino, Las Vegas, NV
 MGM Grand, Las Vegas, NV
 Park Place Entertainment, Las Vegas, NV
 MacAndrews & Forbes Group, Inc., New York, NY
 Occidental Petroleum Corporation, Los Angeles, CA
 DaimlerChrysler Corporation, Auburn Hills, Michigan
 Beverly Enterprises, Inc., Fort Smith, Arkansas
 Stevens, Jonathan H., Burlington, VT
 American International Group, Inc., New York, NY
 Hughes Electronics Corporation, El Segundo, CA
 Berry, Steven K., Amundale, VA
 Fireman's Fund Insurance Company, Novato, CA
 Warner Home Video, Burbank, CA
 Deloitte & Touche LLP, Washington, D.C.
 Arthur Andersen, Washington, D.C.
 KPMG, Washington, D.C.
 PricewaterhouseCoopers, Washington, D.C.
 American Institute of Certified Public Accountants, Washington, D.C.
 Dow Jones & Company, Inc., New York, NY
 Cellular Telecommunication Industry Association, Washington, D.C.
 Intel Corporation, Washington, D.C.
 California Federal Bank, San Francisco, CA
 ITT Consumer Financial Corporation, Minneapolis, MN
 Commonwealth of Virginia, Richmond, VA
 Nippon Steel Corporation, Tokyo, Japan
 Kawasaki, Tokyo, Japan
 Kobe Steel, Tokyo, Japan
 Nisshin, Tokyo, Japan
 NKK Corporation, Toyko, Japan
 Sumitomo Metals Industry, Inc., Toyko, Japan
 Nevada Resort Association, Las Vegas, NV
 Dispoz-O-Plastics Inc., Fountain Inn, South Carolina
 Energy Association of New York State, Albany, NY
 Brooklyn Union Gas Company, Brooklyn, NY
 Central Hudson Gas & Electric Corporation, Poughkeepsie, NY
 Consolidated Edison Company of New York, Inc., New York, NY
 Long Island Lighting Company, Hicksville, NY
 New York State Electric & Gas Corporation, Binghamton, NY

Niagara Mohawk Power Corporation, Syracuse, NY
 Orange and Rockland Utilities, Inc., Pearl River, NY
 Rochester Gas and Electric Corporation, Rochester, NY
 Regnery Publishing, Inc., Washington, D.C.
 EMC Corporation, Hopkinton, Massachusetts
 Bell Atlantic Corporation, New York, NY
 United Parcel Service, Inc., Atlanta, GA
 Langberg, Barry B., Los Angeles, CA
 NextWave Telecom, Inc., Hawthorne, NY
 Reagan Presidential Library Foundation, Simi Valley, CA
 Alliance of Automobile Manufacturers, Washington, D.C.
 Carlson, Richard W., Great Falls, VA
 Deloitte Consulting LP, New York, NY
 Peters Corporation, Santa Fe, NM
 Morgan Stanley & Co., New York, NY
 California Commerce Club, Inc., Commerce, CA
 Proserpi, Arnold Paul, Jupiter Island, FL
 Schlumberger Limited, New York, NY
 Ford Motor Company, Dearborn, MI
 U.S. Chamber of Commerce, Washington, D.C.
 Dorfman, Steven D., El Segundo, CA
 American Gaming Association, Washington, D.C.
 American Airlines, Inc., Dallas-Ft. Worth, Texas
 Westvaco, New York, NY
 International Paper, Purchase, NY
 Boise Cascade Corporation, Boise, Idaho
 Mead, Dayton, OH
 *Bush-Cheney Campaign, Washington, D.C.

*Statements submitted but not yet paid.

70160431_1.DOC

Chairman HATCH. Thank you, Mr. Olson, for an excellent statement.

I am going to reserve my right to question, and I will turn to the ranking member, the Democratic leader on the committee, Senator Leahy.

Senator LEAHY. Thank you very much, Mr. Chairman, and I am glad that we were able to work out the situation earlier.

Mr. Thompson, I will begin with you, if I might, sir. I appreciate very much the amount of time you spent—I know how busy you must be—in coming by to visit the other day. Mrs. Thompson, you should know that your husband positively glowed when he mentioned you and your work at school and elsewhere, and I appreciate that very, very much. He and I discussed the fact that my oldest son went to Emory Law School and how much my wife and I enjoyed going down to Atlanta to visit him.

Mr. Thompson, one of the questions I have asked nominees for 20 years has been on the areas of pro bono work—nominees for judgeships or nominees for high positions in Government—of lawyers because I feel that all of us as lawyers have had somewhat of a privileged role in society. And in the question on the Judiciary Committee's questionnaire about how you fulfilled your responsibility under Canon 2 of the American Bar Association's Code of Professional Responsibility to "find some time to participate in serving the disadvantaged," you list your work with Morris Brown College, which is a historically black college in Atlanta; your efforts as Chair of the Atlanta Urban League in the early 1990's; the pro bono appointments in criminal matters you accepted as a young associate. I also see you are affiliated with Goodwill, the Village of St. Joseph, the Federal Defenders Program, and the King Tysdale—

Mr. THOMPSON. King Tysdale Cottage Foundation.

Senator LEAHY. Cottage Foundation. Have I left out anything there that would be responsive to your finding time to participate in the service of the disadvantaged?

Mr. THOMPSON. Not that I can think of right now, Senator.

Senator LEAHY. And you list the Washington Legal Foundation Legal Foundation Advisory Board, the Southeastern Legal Foundation Legal Advisory Board among organizations that you have been connected with as an officer, director, partner, and so on. That is in question six. You say you are a member of the Federalist Society and you serve on its National Practitioners Council.

Now, am I correct you have resigned from the board of the Southeastern Legal Foundation?

Mr. THOMPSON. I did, Senator.

Senator LEAHY. And is it true that if you are confirmed, you intend to discontinue your affiliation with the Washington Legal Foundation Legal Advisory Board and the Federalist Society's National Practitioners Council?

Mr. THOMPSON. Senator, if confirmed, I plan to discontinue my association with all organizations with one exception, which I believe I have received permission to do from the Ethics Office, and that is, I would like to continue teaching my class at the University of Georgia. I really believe I have made a commitment not only to the university but to those students in my class.

Senator LEAHY. From what I have heard about that, I think the students would probably be very glad to have you.

Mr. THOMPSON. They may not.

[Laughter.]

Senator LEAHY. No, I think they will. I think they are going to be—you may find and the school may find that the enrollment is going to go up considerably.

Chairman HATCH. I have heard you are pretty tough.

[Laughter.]

Mr. THOMPSON. They just had a final exam. I just gave them a final exam.

Senator LEAHY. Tougher than you, Mr. Chairman?

Chairman HATCH. Well, now, that is saying something.

Senator LEAHY. You say the Washington Legal Foundation organization lobbies before public bodies. What kind of matters has it lobbied?

Mr. THOMPSON. I know that they submit amicus briefs to the court. I am not generally aware of their legislative efforts. But it is my general understanding that they have done some kind of lobbying before Congress. But I do know that they do prepare amicus briefs and that kind of thing.

Senator LEAHY. One of the articles that you wrote and I read was a 1990 article dealing with black-on-black crime, and you argued that the death penalty has to be applied in a fair and racially neutral manner, which I would hope we would all agree with.

Mr. THOMPSON. Yes, sir.

Senator LEAHY. And you called for “the strict enforcement of the imposition of the death penalty in order to eliminate any disparity because of the race of the victim.” And last year, the Justice Department released a report that revealed dramatic racial as well as geographical disparities in the Federal death penalty system. The then Attorney General was sufficiently disturbed by the report to initiate further research into the causes of the disparities that had been identified.

As Deputy Attorney General, you are going to be intimately involved in this. What would you do to make sure that, if the death penalty is applied, it is applied in both a geographic and racial equal fashion? Or do it without disparity, I should say.

Mr. THOMPSON. Well, Senator, first of all, I think it would be appropriate in responding to your question to say that obviously as Deputy Attorney General I am most concerned with making certain that all of our laws are administered fairly and with appropriate safeguards. And I think with respect to the death penalty, it is very important, obviously, because of the finality of the imposition of that punishment, that we consider and be open at all times to the imposition of safeguards.

The Federal Government has a fairly exhaustive review procedure, and that would be one thing that I would want to make certain that we continue, a really exhaustive review procedure in terms of how the sentence—how a prosecutor who wants to seek the death penalty must get the certain approvals, and obviously the things that you will look out for are the strength of the evidence and any indication that there is any hint of discrimination

or any kind of other inappropriate reason why that prosecutor may ask to seek the imposition of the death penalty.

But the bottom line as it related to the article that you cited, sir, is that we really need to finally, though, be concerned with holding people who commit violations of law accountable for their actions. And with respect to the death penalty, there are certain crimes that are committed that are so heinous or the aggravating circumstances, sir, are so serious that I believe that the imposition of the death penalty is warranted.

I cited in that article a quotation from Judge Carl Moultrie, who is a highly respected judge in D.C. Superior Court. You may recall Judge Moultrie. And he said with respect to a young man who was before him, he said to this young man, he said, "You're mean"—and apparently this young man had murdered several people in a very serious and aggravating way. And he said to him, "You're mean. You're damn mean, and if I had the death penalty available to me, I would impose it upon you." And we really—we need to be concerned about the disparity, but we need to be concerned about the safety and security of all the law-abiding citizens who—

Senator LEAHY. And you understand, Mr. Thompson, I am not debating the death penalty. The death penalty is on the books, and the prosecutors have a right to seek it, a judge has a right to impose it. I just want to make sure that it is done even-handedly. If you or Mr. Olson or Senator Hatch or myself or a member of our family were charged, you know, God forbid, with a capital crime, we would have the best lawyers, they would have the best lawyers, and it would be all—the defense would be the best, but we see all these studies about assigned counsel where they are paid so very little that they are going to be bankrupt if they actually put in a full defense, or they can't even do a rudimentary investigation. Some turned up they had never defended a murder case, never been in any serious criminal case. They haven't interviewed alibi witnesses. They don't understand their client's history, whether it is mental retardation or anything else. DNA evidence available, they haven't bothered to get it. Some have actually slept through the trial or been drunk in trial. Some have been disbarred, and yet they are there.

These are the things—I would ask you to take a look at a bill that Senator Gordon Smith of Oregon and I have introduced to seek standards and ways to improve the standards in State courts of those who are assigned, because if we continue—if we don't do something to improve it, you are going to continue to have these disparities. But at the same time, you are going to have less and less confidence of the public in our criminal justice system, and you are going to continue to see juries come back with things that nobody can understand.

Mr. THOMPSON. Senator, I pledge to you that I will study your bill, and as I said, I am obviously open to considering all kinds of safeguards as we go about imposing the death penalty.

Senator LEAHY. Having shown the willingness to discuss matters with members of this committee, I assure you, you will probably be hearing from me more than enough. Mrs. Thompson will probably want to take the phone off the hook when you go home to Atlanta.

[Laughter.]

Senator LEAHY. Now, Mr. Olson, as you know, the position of Solicitor General, as you said, is quite different than any other lawyer in the Government, even political lawyers or appointees of the President, and Senator Warner I thought emphasized that very well. You spoke of the fact that you have got to show the highest integrity before the court. You are an officer of the court. They expect you to come forward. They expect to be able to know the strength of your case, but also the weaknesses of the case. If there are things that the court might not otherwise know of, you have a responsibility as the Solicitor General to bring that forward.

But you also have the ability to determine whether you are going to file a friend of the court brief in a case where the Government is not a party. Now, there, before you even get to the question about how even-handedly you handle that before the court, you have to make that preliminary determination if you are even going to go there at all.

What kind of criteria would you use?

Mr. OLSON. Well, that is a very interesting and important question. I have read a great deal of what prior Solicitor Generals and academicians have had to say with respect to that. There is a number of criteria. One thing that has to be taken into consideration is that the United States Supreme Court is only going to read so many briefs and is only going to listen to so many occasions on which the United States decides either to intervene or file a friend of the court brief. And if the United States uses that authority frivolously or in cases where the interest of the United States is not obvious and direct and important, the Court will lose respect for the filings of the Solicitor General's office.

So there are long answers to that question, but it is exceedingly important that the core interests of the United States—and that frequently involves conducting a study of component agencies in the Department of Justice or component agencies within the executive branch and other interests, other interested citizens and so forth who may have something to say with respect to what the interest of the United States is. Each case will have to be looked at on its own, and every prior Solicitor General that I have both spoken to and whose readings I have read say that each case has to be determined on its own. But ultimately it is the interest of the United States, in some respects the President's policies, if they have become a part of a case that might be before the court, those things have to all be consulted.

Senator LEAHY. Ultimately, is it fair to say that a partisan interest of the President—it would be the same either Democrat or Republican—is going to be a major factor in that consideration?

Mr. OLSON. A partisan interest from the standpoint of partisan politics should not be considered. The policies that have been advanced by the President can be and frequently are in any administration. For example, a particular administration may have an interest in enforcing the antitrust laws in a certain way or the environmental laws in a certain way. Those policy interests are among the things that the President is entitled to consider with respect to the discharge of his responsibility to faithfully execute the laws of the United States.

Senator LEAHY. But it is highly conceivable, is it not, that given the exact same set of facts, depending upon who was the President, would determine whether—the fact of who was the President would determine whether the Solicitor General would feel that the interests of the United States were such that a friend of the court brief should be filed?

Mr. OLSON. Well, that can be a factor, yes. But the word that I was concerned about and I want to make it very clear, that partisan interests, Republican, Democrat, those kind of political considerations that have to do with partisanship, should not be a part of the equation. But policy positions are and have been in every Presidency that I have studied.

Senator LEAHY. I will follow up with a similar question that I asked Mr. Thompson so you won't feel left out. And, incidentally, you should get higher points, if you will, from Senator Hatch and myself because we are grandparents, so you get high points just for having three beautiful granddaughters and who are willing to sit through what has to be for them—much as I am sure they love their grandfather, it has to be for them one of the most boring days that they are going to spend.

[Laughter.]

Senator LEAHY. But I think it is a reflection of the good upbringing of both your son and daughter-in-law that they are doing it so politely and so restrained.

Mr. OLSON. Thank you, Senator. That is very gracious. I took their father, my son, to an argument that I had in the California Supreme Court many years ago when he was about 12 years old, and I thought it was a pretty exciting case. And after the argument, I came out and I said, "Well, what did you think, Ken?" And he said, "Dad, that's pretty boring."

[Laughter.]

Senator LEAHY. That reminds me of when my children were young. I had been in the Senate for a while and I was on some national news, and my wife said, "Dad's on television." "Yeah, we've seen him."

[Laughter.]

Senator LEAHY. But to go through what we did on the pro bono, Canon 2, which is to participate in serving the disadvantaged, in answer to that question you generally referenced the work you have done for the Washington Legal Foundation, the Federalist Society, and other foundations and non-profits. Specifically in these, how did you serve the disadvantaged and how did your involvement with that serve the disadvantaged?

Mr. OLSON. Well, I read the model rule which applies to what lawyers ought to consider in terms of how they expend their time. It talks in terms of various different ways in which to serve the community. You mentioned two organizations, but I have been very, very involved in the—and the model rule with respect to this talks about a variety of things, including representing individuals but also teaching, which I have done. I have been very, very active in the American Bar Association. I mentioned in response to that form that I served as an advisory member of the U.S.-Ukraine Foundation. I don't know whether it is mentioned there, but I

served as an advisor to the Women Judges Fund for Justice, which is a part of the independent women's—

Senator LEAHY. In answer to the question, specifically, though, on your answer to the question about Canon 2, participating in serving the disadvantaged, you referenced work you have done for the Washington Legal Foundation, the Federalist Society. Was that serving the disadvantaged in those two cases?

Mr. OLSON. I mentioned that. I think that in response to the model rules there is a range of ways in which to serve people. The American Bar Association is not disadvantaged, but I do spend time doing that. U.S.-Ukraine Foundation is a non-profit organization. I have represented various individuals in the courts. I have discussed in response to that question the individuals I have represented, individuals who felt that their constitutional rights had been violated in connection with admissions programs in universities. I represented an individual in a case in the Supreme Court last year in a *qui tam* case against the U.S. Government. I represented another individual last year who could not afford to be represented in the United States Supreme Court in connection with a voting rights case. We were successful in that case.

I do believe that it is a lawyer's responsibility to be involved in a variety of ways in the community as well as practice of law for profit. Each individual we talk about in our firm will have different ways of doing that and different ways of fulfilling their responsibility. I have done it in a variety of different ways, and I think it is very important for all lawyers to be involved in different aspects of community life.

Chairman HATCH. Senator, your time is up.

Senator KYL?

Senator KYL. Thank you, Mr. Chairman. Let me just make two brief comments. I really don't have a question. I think both of these nominees are superbly qualified for the positions to which they have been nominated, and I know that some members of the Democratic side have questions and, therefore, I would be happy to defer to them.

First, I just want to say that not all of us will be able to attend all of this hearing. I have a speech that I have got to go give, and I had no idea that we would have this kind of a conflict. So please excuse my absence, and I know that I speak for my colleagues as well.

Let me also just say something, Mr. Chairman. I have had an opportunity to talk to both of these nominees, and I just had a wonderful visit with Mr. Thompson. But let me mention something specifically about Ted Olson that I happened to mention to him the other night. He didn't know this, but he and I have a very dear friend in common, the late Rex Lee. Rex Lee was Solicitor General in the Reagan administration. Rex Lee was one of my law partners and by anyone's account was one of the finest Solicitor Generals ever to serve. He also served as head of the Civil Division of the Justice Department before that.

Rex Lee, when he came back to Washington, could never stop talking about a young lawyer and friend of his back here that he said was going to be destined for great things, a young lawyer by the name of Ted Olson. I had no reason to remember that name

except that Rex repeated it so many times to me. And he told me not only about this Ted Olson's legal qualifications and how Rex enjoyed the camaraderie of serving with Ted, but what a fine individual that he was.

The reason that that means a great deal to me is that anyone in this room who knew Rex Lee would know that that is about as high—that that compliment comes from about as fine an individual as there ever was. And so it means a great deal to me.

Thank you, Mr. Chairman.

Chairman HATCH. Well, thank you. Rex Lee was a very close friend of mine as well, and he was a great Solicitor General, and I have no doubt you are going to be a great Solicitor General.

Let's turn to Senator Feinstein.

Senator FEINSTEIN. Thanks very much, Mr. Chairman.

Chairman HATCH. Just so everybody knows, the first round is a 15-minute round. I have asked my side to not ask as many questions so we can get through this today. But I know that many on the Democrat side have a lot of questions. I want to make sure they get a chance to do it. If you need more time, I am not averse to granting it, but I would like to kind of run it that way if I can.

Senator FEINSTEIN. Thank you. I will try and be brief, but I may need some more time.

First of all, Mr. Thompson, yours was one of the finest opening statements I have heard since I have been on this committee. I am really very pleased to cast my vote for you, and I won't take up any time. If I were to ask you questions, they would probably be pretty softball. But I would like to—

Chairman HATCH. Watch out, Mr. Thompson.

[Laughter.]

Chairman HATCH. She looks innocent as can be, but I've got to tell you, she works the Chairman over with regularity.

Senator FEINSTEIN. But I am going to take my questions on Mr. Olson because we did have a chance to meet, and following my meeting I was very prepared to vote for you. And then sitting here today, I read some of the writings that you sent in. Specifically, I want to talk to you about a couple of them.

You wrote an article, "The Most Political Justice Department Ever," a survey for the American Spectator. And it is certainly not an even-handed analysis of the Justice Department under Janet Reno. Your words are somewhat harsh and biting, and in my view, your analysis is very one-sided. And I want to ask you about it.

You say, "The Department"—and I am quoting now—"and its officials traditionally have been held to a standard of independence and non-partisanship not expected at other Federal agencies." And you go on in the article to say, "Attorneys General are judged in substantial part by the quality and integrity of their subordinates and by their insistence that they be selected on their merit and for their commitment to the rule of law," with which I would agree.

But then you go on, and here you really slash and burn at Janet Reno when you point out, "There is ample evidence that cannot be ignored that from the beginning Janet Reno allowed her Department to be overwhelmed by partisan politics and that she readily submitted to the personal and private interests of President Clinton and his partner in running the Department. If the Attorney

General cannot stop the subversion of the Nation's laws by the President under whom she holds office, she must resign. The Attorney General did neither."

And there is something else you submitted, entitled "Criminal Laws Implicated by the Clinton Scandals, A Partial List," and the byline is Solitary, Poor, Nasty, Brutish, and Short. Did you write this article?

Mr. OLSON. I was a co-author of that.

Senator FEINSTEIN. And you go on and you list a whole series of crimes that you believe the President committed and the penalties for those crimes, and the crimes. You believe the First Lady, now Senator Clinton, committed and the penalties for those crimes. You do the same for Mr. Nusbaum, Mr. Hubbell, and Mr. Wright. And in the course of these articles, both of them together, I think you identify yourself very clearly as a very strong political partisan, not as someone who is reserved, temperate, even-handed. And I must say this concerns me, particularly in view of the private conversation we had. I hadn't read these articles before that conversation.

Now, you are going to be the Solicitor General, and as such, you are going to have a big role in the policy of the Department. And I would like to know what kind of Department is it going to be. You set a tone in these couple articles that is, I wouldn't say are vicious, but something pretty close to it. Would you respond?

Mr. OLSON. Thank you, Senator Feinstein. Yes, I think that the two articles are hard-hitting. The second of the two articles that you mentioned talked about potential, not crimes that had been committed but the potential crimes that could arguably have been implicated by conduct which had been reported in the papers. And so that was an attempt to set forth things that should be considered and evaluated with respect to the conduct that was described there.

I did that as a private citizen, as someone who was disturbed—who had served in the Justice Department for 4 years before, and who was concerned about the image of the Department and the actions of the Department of Justice and the importance of the Department of Justice as perceived by citizens generally. I did serve in the Department of Justice in the early 1980's for 4 years as Assistant Attorney General for the Office of Legal Counsel. I believed then and I believe now that when you accept a position in the Department of Justice, you put your partisan positions aside, your personal views aside, and attempt to serve the Department and the people of the American—the American people as even-handedly and as fairly and as openly as possible.

I think that the individuals who served with me in the Department of Justice, some of whom served in high positions in the Clinton administration—Beth Nolan, who was a counsel to President Clinton, was hired by me and worked for me in the Office of Legal Counsel in the 1980's; Harold Coe, who was an Assistant Secretary of State for Human Rights in the Clinton Administration, was someone hired by me and worked for me in the Office of Legal Counsel. People that served with me in the Department at that time I think would tell you that I served fairly, honestly, and put aside any partisan impulses at all with respect to my service in the Department of Justice.

I think you are very right to ask that question, especially because those articles are hard-hitting. They are things that I did believe, especially with respect to the first article, which was a critique of some things that I was disappointed in with respect to how the Justice Department was operated. But I believe also that those were statements as a private citizen, and—

Senator FEINSTEIN. Yes, if I might, what disturbs me about the first article is the lack of even-handedness. Now, you are somebody that is going to go into a major position in the Department and will hopefully evaluate things in an even-handed way. Why should I believe that you will do that when you don't in your writing?

Mr. OLSON. In the first place, as I said, I have served in the Department of Justice, and I believe that everybody who served with me of both political parties would tell you that I served in that way at that time, and so I have a record of demonstration at a high level in a position that is somewhat comparable to the Solicitor General's position in the Department of Justice.

Secondly, what I was attempting to do was point out in that article the things that I felt had happened during that period of time in the Department of Justice that would cause people to be concerned. I mentioned in there the simultaneous firing of every United States attorney at the very beginning of the administration. I mentioned other specific incidents.

I believe at the end of the article I said that the cumulative effect of these things taken together are cause for concern, and I felt as a citizen, having served in the Department of Justice, it was not inappropriate for me to draw that picture that I thought and bothered me because I do believe that the Justice Department is so important and for people to be able to understand that the Justice Department and its actions will be even-handed to serve all of the people.

Senator FEINSTEIN. Let me ask you, if I may, some specific questions. In 1986, you argued in the Supreme Court against a California law requiring employers to give up to 4 months of unpaid maternity leave. You contended that this California law should be struck down as inconsistent with Federal anti-discrimination law. You lost 6-3.

Today, almost 15 years later, there are even more women in the workplace, and we are perhaps even more aware of the dilemmas that working women face when they give birth.

If the same case was to come before you as the Solicitor General today, what position would you recommend that the United States take?

Mr. OLSON. Well, I would have to recommend an opposite position since, as you point out, we did lose that case 6-3. The position that we were arguing on behalf of California Thrift was that there was an inconsistency between what was required by the Pregnancy Disability Act—which requires equal treatment for pregnancy with other disabilities, and there was an inconsistency with the requirement of equal treatment of pregnancy as a disability with the California statute which provided—required employers in California to provide additional benefits for pregnancy which were greater than the benefits received for other disabilities. For example, there

would be a greater period of time off for pregnancy disability than for a heart condition or a broken limb or something to that effect.

The employer in that case that we represented wanted to know which law to follow. The dilemma that the employer had was if it complied with the California statute which required it to treat pregnancy more favorably than other disabilities, then it might be in violation of the Pregnancy Disability Act. If it complied with the Pregnancy Disability act and treated the two disabilities equally, it would be violating the California law. The employer—and I only represented the employer in the United States Supreme Court—had taken that case all the way through a decision in the Ninth Circuit and asked me to represent—present the briefs and argument to the United States Supreme Court.

Justice Stevens, who was one of the 6 votes in the majority in that case, said that when the Pregnancy Disability Act was first passed and the history of the Pregnancy Disability Act was such that I believed then that the argument that was being made on behalf of that thrift was the correct argument, but that there have been other decisions since the enactment of that statute that causes me to change my view.

It was a difficult case, and I can't quarrel with the outcome of the Supreme Court, and I fully accept it. The Court decided in an opinion, a quite intelligent opinion written by Justice Stevens, that there should be a greater accommodation to pregnancy under those circumstances than to other disabilities, and I do accept that.

Senator FEINSTEIN. Well, as you have pointed out, this case has been decided. But, since then, *California Federal Savings and Loan v. Guerra*, the Family and Medical Leave Act has been passed and become law. It is a Federal law. And this Federal statute addresses the same problem as the California statute, but it goes further. And the Department of Justice plays a crucial role in ensuring that this law is enforced and defended against challenge in the courts.

So if you were confirmed, will you defend this law against similar challenges to the one you made in *Guerra*?

Mr. OLSON. Yes, I have no trouble saying that. It is a good question. I think our responsibility is to defend all acts of Congress when it is reasonable to do so unless it is clearly unconstitutional. And I would have no problem giving you my word on that.

Senator FEINSTEIN. Thank you. I wanted to ask you a question quickly about the Commerce Clause. Let me see if I can quickly put this in motion.

Beginning in 1995, with *U.S. v. Lopez*, the Supreme Court has repeatedly struck down Federal statutes, holding that Congress lacked power under the Commerce Clause or Section 5 of the 14th Amendment to pass those laws. Congress generally relies on the Solicitor General to defend the constitutionality of its statutes.

If the Solicitor General has an overly narrow view of the Commerce Clause or other basis for Congressional power to pass statutes, then he or she may not vigorously defend Federal statutes and Congress' power will erode even further.

You suggested in an August 1995 speech that you have a very narrow view of the Commerce Clause and that the Supreme Court did not go far enough in *U.S. v. Lopez*. Specifically, you stated, and

I quote, "*Lopez* is surprising, mostly because of what we have come to expect from the Court's hand-off policy toward Congressional regulation of every aspect of our life. For anyone who cares that there be some limits on what Congress can do, it was a refreshing suggestion that there might be some meaning left in the original Constitution. But the narrowness of the decision and the fact that the Court unanimously approved a broad application of the Commerce Clause in a RICO case 3 weeks after *Lopez* makes both the cheering by conservatives and the lamentations of liberals a little premature."

Do you still agree with the statements you made in 1995 that *Lopez* was too narrow and that the Court needs to aggressively police Congress' power to pass statutes pursuant to the Commerce Clause?

Mr. OLSON. Well, there was more, of course, that I said in that particular speech about the Commerce Clause and the context of the decisions. It was a surprise, the *Lopez* case was a surprise, because it had been the first time in 50 years that the United States Supreme Court had decided that the Commerce Clause had been exceeded in connection with an action of Congress.

A great deal more has been said about the United States Supreme Court since the *Lopez* case, and I can't say that I would agree or disagree necessarily with those particular words. I would say this, that as I told you a moment ago, Senator Feinstein, it is the responsibility of the Department of Justice to defend acts of Congress, and unless they are clearly unconstitutional, especially in the area of exercise of its commerce power, which is a very broad power, in the scheme of things the United States Supreme Court has upheld in a number of cases a very broad exercise of both the commerce power and the Necessary and Proper Clause. And I think it is incumbent upon the Department of Justice to defend those exercises of power. It is exceedingly unlikely in my judgment that there would be a case in which a properly documented exercise of the commerce power—which the Congress has determined to do since the *Lopez* case, because one of the problems with the *Lopez* case is the Court did not find sufficient expression of Congressional intent with respect to how the presence of a gun in the vicinity of a school related to commerce. That may well have been. The Congress is doing a great deal more—

Senator FEINSTEIN. Because the gun came across State lines.

Mr. OLSON. But that wasn't a part of the proof in the case as a requirement with respect to that particular prosecution or that particular individual, at least as I recall it. Now, I could be wrong about that.

But to answer your fundamental question, I do think that it is our responsibility in the Justice Department, whatever our views as to what the Supreme Court should or shouldn't do under the Commerce Clause as a private citizen, is to defend the actions of this body.

Chairman HATCH. Senator, your time is up.

Senator FEINSTEIN. I believe my light is on. Thank you.

Chairman HATCH. We will turn to Senator Specter, and I am hopeful that we can then turn to Senator Feingold. We are going to have to break.

Senator Specter?

Senator SPECTER. Thank you, Mr. Chairman. I join my colleagues in welcoming you men to these confirmation hearings. You both come with very strong academic and professional credentials. In view of the limited time, I will not review them.

Let me start with you, Mr. Thompson, and I thank you for coming by and meeting with me, the customary courtesy call. I would like to put on the record some of the concerns that I raised with you at our private meeting about Congressional oversight. The law is that Congressional oversight takes precedence over criminal prosecutions because the interests of having legislation or Congressional input dominates over a prosecution in a specific case. That can raise some problems. It did in Iran-contra when the Poindexter and North cases were prejudiced by what had happened. But my own view is that the Congressional oversight is sufficiently important that there ought to be no doubt about its preeminence. And I would like your views on that subject generally for the record.

Mr. THOMPSON. Yes, sir. And thank you for seeing me, Senator Specter.

As I mentioned to you, and I made a statement in my introductory remarks, in order for the public to have confidence in the Department of Justice and all the confidence that we want the public to have, we will need to be as open to the public as we can, taking into consideration legitimate investigatory concerns like grand jury secrecy or sensitive law enforcement materials. And as I said to you when we met, I think it is very important—an important function of maintaining the confidence that the public has in the Department of Justice is for Congress to have confidence in us. And I certainly appreciate and respect the oversight function that this body has for the Department of Justice, and I pledge I will work with you, Senator, work with you vigorously to work out any kind of problems that we will have so that you can fulfill your important oversight function.

Senator SPECTER. We had some fairly divisive issues which we confronted in the course of the past several years, and we were compelled to subpoena a line attorney in one situation. And I think that should not be undertaken lightly. I have had some experience as a prosecutor myself, but there are some occasions where the Congress needs access to the information. And, again, at least as I read the law, it is clear that we can subpoena line attorneys if we decide that it is a matter of paramount interest.

Do you have any problem with that, Mr. Thompson?

Mr. THOMPSON. Well, if we get into a situation where you feel that you need that kind of information, I think we would need to approach that situation, look at it on a case-by-case basis, work creatively to try to resolve any issues that we both may have.

As I mentioned to you, I have a concern—and I know that you appreciate it as a former prosecutor—with protecting the deliberative process. As someone in a leadership role in the Department, we will need to be able to make decisions and have good and honest input from all different lawyers, all the different lawyers on a case or an investigation, whatever kind of position they may be. And we want to make certain that we will have the freedom for lawyers to inform us of their positions.

So when we get to a situation where you think that you need that kind of information, I can't tell you how we will come out until we look at the specifics on that as a case-by-case basis. But we do need to work together, make sure that you have all the information that you need to fulfill the oversight function, and make certain that we can do everything that we can to protect the important deliberative function that is essential, I think, to having an effective investigation and prosecutive efforts.

Senator SPECTER. I appreciate the need for your deliberative process, and I hope you appreciate the need for our deliberative process so we can figure out what the facts are and decide what the public policy should be. And I think there ought to be an accommodation wherever that is possible.

Very briefly, let me review for the record the concerns that I had expressed and hope you will undertake in the new administration, and I have talked informally to the Attorney General about this on the espionage cases. Last year, I undertook some of the oversight, chairing the subcommittee, which got very deeply involved in the Wen Ho Lee case and urge you to review closely the procedures for the applications for warrants under the Foreign Intelligence Surveillance Act, and take a close look at the monitoring of those cases as they proceed.

In that particular situation, the matter was delegated—the matter was sent personally by the FBI Director to the Attorney General, who delegated the matter to an individual who had no experience in the field, and there was no follow-up. The warrant wasn't granted. And then the FBI sat on the case for about 16 months without acting. And then there were polygraphs administered by the Department of Energy which were questionable as to conclusions, and then finally, there was a warrant executed in April 1999. And, again, the Federal authorities sat on the case until Dr. Wen Ho Lee was arrested in December, and then suddenly he was Public Enemy No. 1 and had to be shackled. I had expressed publicly my concern as to whether the shackles were imposed to coerce a guilty plea, where he was at liberty for months and then suddenly was taken into custody. And those cases are of enormous importance.

Then in the Dr. Peter Lee case, there was a failure of communications between Main Justice and the prosecutors to the acceptance of a guilty plea, and I won't dwell on it at length. But I would ask for your commitment to review the findings and take a look at how we can sharpen up the Department of Justice practices on these very important espionage matters.

Mr. THOMPSON. Senator, I can assure you that I will review your concerns with seriousness.

Senator SPECTER. The issue of independent counsel is no longer before us because we do not have a statute. But legislation is pending, which a number of us have cosponsored, to bring it back. My own view is that something will occur which will require an independent counsel statute at some time in the future. And I have a grave concern as to the finality of the Attorney General's decision not to appoint independent counsel.

Some district courts have ruled that there could be a mandamus action to compel the Attorney General to act. In general, the pros-

ecuting attorney, whether it is a Philadelphia DA or the Attorney General of the United States, has broad discretion, but where the discretion is abused, there is authority for the court to take a stand on a mandamus action. And I didn't have a chance to discuss it with you in our private meeting, but I would be interested in any observations you have on that subject?

Mr. THOMPSON. Senator, I have not had an opportunity to review your legislation. As you know, as I understand it, the procedures now call for the appointment of a special counsel in certain situations where the Attorney General deems it appropriate to go that way as opposed to someone in the Department of Justice.

I have been associated with the Department of Justice for many years, either as a prosecutor or as a defense lawyer, and there are many dedicated and hard-working people in the Department. And I am confident, based upon my experience with the Department, that the majority of the matters that will appear before the Department of Justice can be handled by the Department's career employees.

I have not had a chance to review your legislation, and I certainly would look forward to doing so and talking to you about it because I was an independent counsel at one point in time, as you know, a replacement independent counsel for Judge Adams from Philadelphia. And I know you know him, too.

Senator SPECTER. Thank you very much, Mr. Thompson.

Mr. Olson, I appreciated the opportunity to meet with you privately, and I express my regret at leaving you in the reception room for a long time when a vote was called midstream. Your wife is smiling behind you. She apparently heard about that. I couldn't leave the vote, and by the time I had come back, you were AWOL. You had gone.

[Laughter.]

Senator SPECTER. And I understand—

Mr. OLSON. I think she is smiling because I told her what a good time I had standing there meeting all the people that came by. It is a fascinating thing to stand outside the chamber there where votes are taking place because, as you know but a lot of the citizens don't know, it is such a fascinating flow of activity, and it makes you feel a part of the excitement of what is going on.

Senator SPECTER. Well, it is a tremendous place if you have a few minutes. I am not sure whether it was Senator Dole or Senator Danforth who called it "Gucci Gulch" at one point to see all of the lobbyists there.

Mr. Olson, I would like to take up with you a question which we did not have an opportunity to talk about, and that is the question of affirmative action. And let me read you a couple of my questions to Attorney General Nominee Meese in 1985, January 30th. I am beginning to think I have been around here a little too long, perhaps, going back to this transcript.

I asked the Attorney General—what I am going to ask you for is your comments and your views as to whether his views would be your views or how you would respond to them. My question was: "What role, if any, do you think it appropriate for affirmative action in the enforcement of civil rights laws, Mr. Meese?"

"Senator, I think affirmative action in the enforcement of the civil rights laws is a very important and proper remedy for anyone who has been the victim of discrimination. I think in addition to that, and quite apart from those who have been victims of discrimination, I think affirmative action is highly desirable public policy to extend recruitment efforts and outreach to bring more minorities and women into the job force and into contention for jobs that are available."

And then a little farther down, I said, "You affirm it as a principle. Do you try to enforce it? Do you look for situations where you can take action to bring a black or a Hispanic or a woman into the process where there has been steady discrimination in the past?"

Mr. Meese: "Yes, sir."

How would you—do you agree with Attorney General Meese?

Mr. OLSON. Let me put it this way: The term "affirmative action" means something different to almost everybody that uses that term, and to some people, it embraces the concept of recruitment, outreach, as Attorney General Meese apparently said during that testimony. To other people it means giving an advantage of one form or another to a person based upon the color of their skin or other conditions of that sort.

Since 1985, when Mr. Meese made those statements, the United States Supreme Court has made it clear in the *Adarand* decision and the *Croson* decision that when Government takes race into consideration in making its decisions, those policies or those plans must be subject to strict scrutiny. This is a very, very important subject because race and equal opportunity is so important in this country, and the elimination of disadvantages that people have suffered as a result of racial discrimination is so important in this country.

What the Supreme Court is saying is that because the decisions that can be made that might benefit one person could conceivably result in the discrimination against another person because of that person's race, the facts of that particular circumstance have to be looked at very carefully. For remedial purposes, which is something else that Mr. Meese mentioned in that statement, for remedial purposes the Supreme Court may regard that in one fashion. For other purposes, the Supreme Court might regard it differently. What the Court is saying is that we must look for a compelling governmental interest if race is going to be taken into consideration in governmental decisions and whether the governmental decision is narrowly tailored to accomplish the compelling governmental justification.

So it is an extremely important but also a very complicated and very difficult subject.

Senator SPECTER. We have two decisions from the United States District Courts in Michigan involving the University of Michigan which have received a fair amount of comment. *Gratz v. Bolinger* involved the university's use of race in its admission process in the undergraduate school, and on December 13th, the trial judge ruled without trial and granted summary judgment, finding that the pursuit of educational benefits of diversity is a compelling governmental interest and that the university's current admissions policy is fully constitutional.

Would you agree with that decision, that diversity is a compelling governmental interest which would justify the university's admissions policy?

Mr. OLSON. Senator, that case may well percolate up to the Office of the Solicitor General.

Senator SPECTER. Well, it is very relevant.

Mr. OLSON. Yes, it is, and there is another decision, the other decision that you mentioned, the district court—a separate district judge came out the opposite way with respect to the law school admissions program.

Senator SPECTER. How could that happen in one State within 4 months? You don't have to answer that question, Mr. Olson. It happens all the time. But—

Mr. OLSON. Well, what I think is important about that is that the facts of the particular case are exceedingly important. The policy itself, the past history of the institution applying the policy, the Supreme Court tells us is exceedingly important, what other alternatives have been considered, how far the program goes. In other words, there is a wealth of factual considerations both with respect to the implementation of the policy as being implemented plus the past history, what remedial circumstances are being taken into consideration either in the specific institution or in the larger university community or in the State educational system itself.

There is, as you know, another case in the Eleventh Circuit, and there is another case in the Ninth Circuit. Those are very important cases, and I couldn't begin and it wouldn't be prudent to prejudge how the Department will review those or even how I would feel about them, because I don't know enough about the facts or the law with respect to as it was applied in that particular district court decision.

Chairman HATCH. Senator, your time is up.

Senator SPECTER. May I ask one more question?

Chairman HATCH. Will this be your last one? Then we will do that.

Senator SPECTER. One question. Do you agree with Justice Powell in *Bakke* that race could be a "plus" factor in university admissions?

Mr. OLSON. Part of what Justice Powell said in the *Bakke* decision that received four other votes and received the support of the Court is that under some circumstances it may be appropriate to take into consideration a person's race. That teaching of Justice Powell and of the United States Supreme Court in the *Bakke* case has been subject to further analysis and refinement, and from the *Adarand* decision and the *Croson* decision, and I wouldn't want to isolate out the statement of one Justice in a particular case without spending a great deal more time looking at how the law has been affected by subsequent decisions and the application of the strict scrutiny standard which wasn't being applied in that case.

Senator SPECTER. Before I came today, I knew you were a good lawyer, Mr. Olson. After hearing your testimony, I know you are a very good lawyer.

[Laughter.]

Mr. OLSON. Thank you, Senator Specter.

Chairman HATCH. Well, coming from one good lawyer to another, I think that is a good compliment.

Mr. OLSON. Thank you, Senator.

Chairman HATCH. Senator Feingold?

Senator FEINGOLD. Thank you, Mr. Chairman. Let me congratulate both the nominees.

As I said during the committee's consideration of the Attorney General nominee, I believe there are some general principles that should guide our consideration of cabinet and sub-cabinet-level nominees. First, the Senate should consider whether the person is qualified to do the job. Second, the Senate has had a history of giving deference to the President's cabinet and sub-cabinet choices. With rare exceptions, the Senate has given the President broad leeway in choosing subordinates.

I hasten to add, as I did during the Attorney General confirmation process, that this level of deference does not necessarily apply to lifetime Federal judicial appointments.

The Senate has for the most part avoided rejecting the President's executive branch nominees because of their ideology alone. But the Senate may certainly examine whether the nominees' views might prevent them from carrying out the duties of the offices to which they have been nominated.

Today we consider two nominees for two very different important positions in our Federal Government. The Deputy Attorney General is the second in command at the Justice Department, if you will, the chief operating officer. The Deputy Attorney General oversees the day-to-day administration of the Justice Department. The Solicitor General is the Nation's chief advocate, representing the views of the U.S. Government before the Supreme Court.

Given the role these two nominees will play in shaping and enforcing the law, I am particularly interested in whether the nominees will be able to carry out the promises that Attorney General Ashcroft made to this Committee and our country in a variety of areas, including enforcing civil rights laws, protecting women's reproductive rights, and continuing the prior administration's commitment to a thorough review of the Federal death penalty system. And I am pleased that that is an area that has already been talked about.

Mr. Chairman, I also would like to echo the concerns of the ranking member, Senator Leahy, in expressing my concern with how this hearing was scheduled. These are enormously important positions, yet both of these nominees were scheduled to appear at the same time on the same day in one hearing. And this hearing was scheduled on one of the busiest days of the session, what was—what we had hoped would be the last day of votes on the budget resolution. It may not be, but certainly one of the last 2 days. And I understand that the Senate Judiciary Committee has never before today held a joint confirmation hearing for these two very important positions. I am concerned about that. I am grateful that the Chairman has allotted us a 15-minute period, but I did want to note my concern.

Mr. Chairman, I was pleased with the bipartisan way in which you and Senator Leahy organized and scheduled the Attorney General confirmation hearing. I hope future confirmation hearings are

not held in such a rushed manner and instead follow the model that you both ably created in January.

To my questions, let me just first ask a question of Mr. Thompson. You wrote an article entitled "Dealing with Black-on-Black Crime." You emphasized that black Americans can support tough anti-crime measures. You said that blacks do not see strong law enforcement efforts as antithetical to notions of individual civil liberties. Yet certain tough anti-crime measures, in fact, have been antithetical to individual freedom. Let's take, for example, racial profiling.

Racial profiling was encouraged as a tough anti-crime tool by Federal and State law enforcement officials, and I am sure many offenders have been stopped or thwarted. But law enforcement has gone too far. Blacks, Latinos, Asians, and other Americans of minority ethnic or racial backgrounds in Wisconsin and across this country have been profiled one too many times, and they are, I think with justification, fed up. Untold numbers of law-abiding Americans have been violated. Some of them are victims of racial profiling more than once. I understand that racial profiling has been so pervasive in the black and Latino communities that some have come to expect to be victims of racial profiling and don't even understand it is a violation of their rights. They just believe it is a fact of life as a black or Latino in America. It is outrageous, it is unacceptable, and it has to be eliminated.

So, with respect, Mr. Thompson, tough anti-crime measures are well and good to protect the American people, but it is a violation of fundamental American freedom and equality if the police act in a racially biased manner. In his address before Congress, President Bush pledged to end racial profiling in America. Two days later, Attorney General Ashcroft sent Congress a letter noting that he believes that racial profiling is unconstitutional. He also said that he supports data collection legislation sponsored by Representative Conyers and myself last year and that he would begin to study outlining that bill if Congress did not act within 6 months.

I, of course, welcome this interest from the President and Attorney General. Representative Conyers and I are currently preparing our legislation and expect to introduce it soon after the April recess.

Mr. Thompson, don't you agree that tough anti-crime measures should not be used in a racially biased manner? Do you agree that racial profiling is unconstitutional and should be eliminated?

Mr. THOMPSON. Not only do I believe, Senator, that racial profiling is unconstitutional, it is just simply wrong. When I am talking about tough anti-crime measures, I am talking about measures that are going to be administered fairly and impartially and without any hint of discrimination whatsoever.

As I said in my opening statement, it is very important for the Department of Justice to maintain the trust and confidence of all of its citizens, and certainly you can't ever go about achieving that result if you are going to support crime measures that are not administered fairly or impartially or with some kind of discriminatory purpose. So I agree with you, and I was really gratified that President Bush and Attorney General Ashcroft indicated that racial profiling would be one of the top objectives of the Department of

Justice to eliminate and to stamp out ,and I am pleased to be a part of that effort, Senator.

Senator FEINGOLD. And I take it you share the characterization of racial profiling as unconstitutional?

Mr. THOMPSON. It is certainly wrong. I haven't had a chance to discuss the constitutionality of it with my colleague to my left and the other career people in the Department of Justice, but I can tell you with every amount of fervor that I have that it is certainly wrong. I have been the victim of that kind of activity. It is insulting, it is degrading, and it is wrong.

Senator FEINGOLD. I appreciate that answer. I would just note that the word "unconstitutional" I am taking from the Attorney General. That is—

Mr. THOMPSON. Well, I agree with anything the Attorney General—

Senator FEINGOLD. That is what I thought.

[Laughter.]

Senator FEINGOLD. I want to get that clear.

Mr. THOMPSON. Thank you.

Senator FEINGOLD. All right.

Senator LEAHY. You notice how we make sure that we give you the total opportunity for any redemption, not that you—

Mr. THOMPSON. And I appreciate that. I would hate to get off to a bad start with my new, hopefully, boss.

Chairman HATCH. Well, let's keep that redemption all the way through the hearing.

Senator FEINGOLD. Let me just say I have certainly heard very, very positive and wonderful things about you from a number of people, so I look forward to working with you.

Mr. THOMPSON. Thank you, Senator.

Senator FEINGOLD. Let me turn to Mr. Olson. This was really initiated by Senator Feinstein, but I just want to follow up. In 1982, when you were head of the Office of Legal Counsel in the Reagan Justice Department, you wrote the following in the Harvard Journal of Law and Public Policy: "The laws that we disagree with, the policies that we do not like, once they are implemented into law must be enforced by the President and the Justice Department, notwithstanding our antipathy toward them. We in the Justice Department must also defend the constitutionality of Congressional enactments, whether we like them or not, in almost all cases. We are the Government's lawyer. So even if we disagree with the policies of law and even if we feel that it is of questionable constitutionality, we must enforce it and we must defend it."

Do you still hold that view today?

Mr. OLSON. Yes, I do, and there are, of course, circumstances—and they were mentioned by Attorney General Ashcroft and they have been mentioned by other people in the Department of Justice from time to time, for example, situations where the executive power is involved or where something is clearly unconstitutional or there is no reasonable defense because—that can be mounted with respect to a statute because we have an obligation to the courts, especially the United States Supreme Court, to make arguments that we believe are legitimate arguments. But I strongly believe as a matter of separation of powers and the responsibility of the De-

partment that there is a heavy burden of presumption that the statute is constitutional. We must be vigorous advocates for the Congress when we go before the courts.

Senator FEINGOLD. In that spirit, I assume you would agree that if there is a good-faith argument that a particular Congressional statute is constitutional, the Solicitor General must defend that statute—

Mr. OLSON. Yes, I do.

Senator FEINGOLD.—even if he—let me just finish the question, even if he personally might reach another conclusion were he sitting on the Court himself?

Mr. OLSON. Yes.

Senator FEINGOLD. And I would like to follow with a more specific example. I am sure you are aware that the Senate just a few days ago passed what I regard as a significant piece of legislation concerning campaign finance reform. I am sure you are also aware that—

Senator LEAHY. Which one was that, Senator?

[Laughter.]

Senator FEINGOLD. I am sure you are also aware that there are heated disagreements in the legal community and in the Senate about the constitutionality of that particular statute, and, of course, members of this Committee disagree on it.

When Attorney General Ashcroft appeared before the Committee in January, I asked him about whether he would defend the McCain-Feingold bill in court if it ended up being enacted. This is what he said: “While there are lots of things that I disagree with, I believe it would be the responsibility of the Attorney General to defend it vigorously in court. I disagreed in policy on the bill, but it would be hard for me to imagine that the bill does not survive the kind of scrutiny which would provide an instruction to the Solicitor General to defend the bill in every respect.”

Have you been involved in any discussions concerning the constitutionality of the various campaign finance reform proposals?

Mr. OLSON. No, I have not, except one member of this Committee asked me about it when I was visiting. I have not studied the various provisions, and, of course, I don’t know what the bill will look like when it is finally enacted, which I assume it will be. But I assume you have another question. I won’t rattle on.

Senator FEINGOLD. Fine. Well, let me just—it sounds like I know the answer to the next one, but let me just put it on the record. Have you participated in any legal strategy discussions concerning possible challenges to those proposals?

Mr. OLSON. No, I have not.

Senator FEINGOLD. Have you formed a personal opinion regarding the constitutionality of the bill that we passed on Monday night or any predecessor bill that the Congress considered?

Mr. OLSON. No, I have not. I have spoken from time to time on the issue of campaign financing and the First Amendment implications and the *Buckley v. Valeo* decision, but I have not studied the provisions of your bill. And I don’t have an opinion with respect to the constitutionality of any portion of it.

Senator FEINGOLD. Do you have any doubt that as Solicitor General you will vigorously defend a campaign finance reform statute that Congress passes and the President signs?

Mr. OLSON. I have to look at the statute that is passed, Senator, but I will approach it with that same presumption that I described to you, that there is a heavy presumption that it is constitutional. If there is a good-faith defense that could be mounted for it, it is the responsibility of the Justice Department and the Solicitor General to put the very, very best defense forward, irrespective of any personal views that any of us might have. And I think that that is—I can't stress that enough, that Congress depends upon the Justice Department to do that, to be its most vigorous advocate with respect to the laws that it passes.

Senator FEINGOLD. Let me just take one other aspect of it. Suppose Congress would have passed the McCain-Feingold bill as it stands now and the President signs it, but says that he has grave reservations about the constitutionality of certain provisions. What in that situation is your view of the responsibility of the Solicitor General when those provisions are challenged?

Mr. OLSON. I think my answer would be the same. I would have to look at the provisions, but the fact that the President might have expressed some doubts doesn't alleviate the Justice Department from its responsibility to do everything it can within reason to defend the constitutionality of the statute.

Senator FEINGOLD. I appreciate that answer. On one other quick matter, Mr. Olson, you have a distinguished record as a Supreme Court advocate. Indeed, in recent times you made the most Supreme Court appearances of anyone ever nominated to the post of Solicitor General. You also have a long history of commenting on legal issues in the press. Your wife, who I see here and congratulate her as well, is also a well-known legal commentator with strong views on many of the issues that may end up before the Court.

I would like to know what standards you will apply in determining whether you should recuse yourself from representing the United States before the Court or from participating in discussion of the Government's position in particular cases?

Mr. OLSON. Well, each—I have consulted with previous Solicitors General and with the Department of Justice with respect to that very question. Obviously if it is a case that I have been involved in or it involves a client, recusal is a relatively easy question. Other people—then the circle gets wider, of course, with respect to issues. I will give you this example that someone gave to me that we don't want the Assistant Attorney General for Antitrust to be recused from antitrust issues simply because they have handled cases and they have ideas with respect to the antitrust laws.

What I have committed to do is with respect to any area where a question arises in my mind or anybody—in the minds of anyone in my office, I will consult with the ethics officials in the Department of Justice and look at that very carefully. On the one hand, you want to make sure that you are not participating in a case that you should not participate in. On the other hand, it is important not to evade the responsibility that both the President and your

Committee and the Senate have placed in me, if I am confirmed, to do the job of the Solicitor General.

Senator FEINGOLD. Thank you, and I congratulate both of you.

Thank you, Mr. Chairman.

Chairman HATCH. Well, thank you. I appreciate my colleagues' concerns. Let just make this statement, because I think I need to make a complete record, but I do believe that my colleague, Senator Feingold, shares my view that we need to move on these agency nominees as quickly as possible. This is what he argued when we had a Democrat in the White House, and that is what I did as Chairman during that time.

In fact, if we were to follow the model of Clinton nominees for these two positions, we would be reporting them out of Committee in less than a week from today or even by tomorrow and through the entire Senate within a day or two thereafter.

I firmly believe that scheduling this hearing for today is perfectly appropriate. Ted Olson's nomination was received by this Committee on March 13th. Larry Thompson's was received on March 22nd. Notably, we received the public notice or intent to nominate on February 14th, 50 days ago. Now, given that Mr. Olson's record is quite public, we can all agree, it seems to me, that there has been more than sufficient time to review his record.

Let me also add that the scheduling of this hearing is hardly out of line with the way the Committee has proceeded in the past. In fact, I recall that I tried my best to cooperate with moving forward on many of President Clinton's nominees at an even quicker pace. For example, President Clinton's first nominee for Deputy Attorney General had his nomination hearing just over 1 week after he was nominated. He actually had his hearing, was reported by the committee, and was confirmed by the Senate within 3 weeks of his nomination.

And this record was broken by President Clinton's second nominee for the position the following year, one of the great people who served—not that the others are not, but Jamie Gorelick was confirmed by the Senate two and a half weeks after nomination.

With respect to the Solicitor General nominees, I think the record for movement of nominees is quite similar. For example, during my chairmanship President Clinton's last nominee for the Solicitor Generalship was confirmed by the entire Senate approximately 5 weeks after his nomination. Notably, he was actually confirmed by the Senate within 48 hours after his hearing. Drew Days was confirmed a week after his hearing.

Now, in this instance, I know my colleagues can appreciate that we are coming up on a 2-week recess. Thus, having this hearing before the recess, it seems to me, will accommodate members' ability to submit questions and review the answers to these questions in an orderly manner. In contrast, President Clinton's two Solicitor General nominees were moved through the Committee and the Senate right after their hearings.

Now, is putting the Deputy Attorney General and the Solicitor General on the same panel, is that unprecedented? You know, placing more than one significant nominee on the same panel is hardly unprecedented.

I can recall a number of times during the Clinton Administration, when in order to move judges, I have had panels for six and more judges, including District and Circuit Court Judges. I did not hear any complaints from the other side in those instances. Having more than one significant nominee in a hearing is also not uncommon. For example, Charles Fried shared the hearing with a nominee for Assistant Attorney General for the Office of Legal Policy. And in fact, Deputy Attorney General nominees have even shared their hearing with District and Circuit Court Judges in the past.

So, I just want to make the record clear that we are not trying to do anything inordinate here. We are trying to get this administration some people down at Justice so that the American people will benefit from having people at Justice.

I think you have heard two excellent people here today so far, who basically have indicated they are going to uphold the law, they are going to enforce the law, and they are going to do what is right. So I have been very impressed with the hearing thus far.

It has been requested we break. I would like to break—we are going to break for 1 hour. We will recommence here at two o'clock sharp. And I hope that—I think we will start with Senator Sessions when we get back. I hope we can get—I expect to get through this hearing before the end of this day. So let us hope that we can do that. With that, we will recess until two o'clock.

[Luncheon recess at 1:02 p.m.]

AFTERNOON SESSION [2:01 p.m.]

Chairman HATCH. We will turn to Senator Schumer, and Senator Sessions will be after Senator Schumer.

We want to move ahead here as rapidly as we can this afternoon. I intend to finish this, and hopefully, we can finish it before 5, 5:30.

Senator SCHUMER.

Senator SCHUMER. Thank you, Mr. Chairman. I want to thank both of our witness for being here. And I guess I have a few questions.

The first question I have is to Mr. Thompson. And I have met you, Mr. Thompson, and I am impressed. But I am very, very concerned with the Justice's Department role in selection of judges, where I think we are headed toward a donnybrook if things do not change. And from what I understand, there is not going to be—in the past the vetting of judges and the working of judges has been with an associate attorney general, but as I understand it, the administration does not intend to fill that position. So I am asking you, since you are the closest one to the associate, one step higher.

What do you think the role is that senators should play in the process? I think there is a feeling on our side right now that there is very little consultation, real consultation, and not even touching base. When there is touching base, we get listened to, yessed, and then, at least in my situation, read in the newspapers that none of my suggestions are being taken into account at all, and I had tried to be very fair and very moderate about them. I am not the only one who feels that way. And our poor Chairman here, who is going to have to deal in a 9–9 Judiciary Committee, is going to have a lot of trouble in getting the administration's nominations through if there is not some kind of give and take and back and forth.

One other point I would make, which I have made to the chairman, we are in new territory a lot of times. Seven of the nine Democrats on Judiciary Committee come from states where there are two Democratic Senators. And for us in New York, this is the first time that has happened since Lyndon Johnson, where there are two Democratic Senators and a Republican President, or the converse. So there will be a choice. You will either have to work with someone of the opposite party or not work with the Senate at all in New York State and many other states.

And so I would simply like to know what is your view? Where do you think we are headed in this direction? I have to tell you, we have been off to an inauspicious start in this regard. But I can tell you, speaking only for myself, I am not going to be rolled over on this.

Mr. THOMPSON. Senator, I understand—

Senator SCHUMER. No disrespect to you, who has nothing to do with it so far.

Mr. THOMPSON. Senator, I understand your concern. I have not had an opportunity to discuss with Attorney General Ashcroft exactly the precise role that the Department will play in the judge selection vetting process. Obviously, the ultimate decision is the President's. And I understand your concern. My home state has two Democratic Senators as well. But, Senator, I am a trial lawyer, and I recognize the importance in judge selection, to have a judge, who not only may share the political views of the President, but a person who is a good legal scholar, who is fair, and is impartial. And I would submit to the Senator that lawyers throughout the country, that is the kind of input that they are going to be giving the President, and I certainly pledge to you that whatever role Attorney General Ashcroft decides that we will have in this process, that I have worked with members of the opposite party all of my life in a cooperative effort, and I pledge to do that with you, Senator.

Senator SCHUMER. Well, just if you could elaborate. What is your feeling as to the role of the Senate and Senators from the states of the judges? What is the appropriate role there?

Mr. THOMPSON. Well, obviously, beyond the advise and consent, I would defer to the President. It is the President's decision, and whatever role that the President, and whatever input that he chooses to use and take, I would have to defer—it is his decision. I would have to defer to how he would want to handle that process. But what I was pledging to you is: whatever role we have—and there will be a role, I am certain, of the Department of Justice—we will work with you in a cooperative manner.

Senator SCHUMER. OK. Well, I appreciate that very, very much.

My next few questions are for Mr. Olson on the issue of *Roe v. Wade* and the issue of choice. Attorney General Ashcroft stated during the course of confirmation hearings, that he, quote, "accepts *Roe* and *Casey* as the settled law of the land", and he will, quote, "follow the law in this area."

"A", do you agree that *Roe* and *Casey* are the settled law of the land, and will you similarly follow those decisions in the abortions rights area?

Mr. OLSON. I read the testimony of former Senator Attorney General Ashcroft, and I have no quarrel with his testimony. The Supreme Court has decided those cases. They made it very clear last term, in another decision, that they regard those cases as the law of the land, and only the Supreme Court can decide whether something is settled or not, but that those decisions are the law of the land. I accept them as that, as did Attorney General Ashcroft.

Senator SCHUMER. Now, Attorney General Ashcroft further stated during his confirmation hearings that—this was in response to questions from me—that, quote, “I don’t think it could be my agenda to seek an opportunity to overturn *Roe*.” Mr. Olson, do you believe it could be your agenda to seek an opportunity to overturn *Roe*?

Mr. OLSON. It is not my agenda to seek an opportunity to overturn *Roe*. And I will also say what the Attorney General said, is that the Solicitor General has a very important responsibility to consider all of the cases that the Solicitor General is bringing to the United States Supreme Court. It does not do the government any good to bring cases to the Supreme Court that the Supreme Court has said, “We have decided those issues”, especially if they are issues as fraught with controversy and emotion as the issues involved in those cases.

Senator SCHUMER. Right. And how about an agenda to cut back on *Roe*, if not overturn it, to cut it back in one or another?

Mr. OLSON. I do not have any agenda with respect to that subject or any other substantive subject. My principal agenda is to make sure that the office runs effectively and efficiently and represents all of our citizens and the Government properly.

Senator SCHUMER. OK, thank you. Let me ask you this one, all along the same line. Recognizing the Supreme Court has indicated it does not wish to reconsider *Roe*, the in his confirmation hearings—this was in response to Senator Feinstein’s question—said, quote, “I do not want to devalue the currency of the Solicitor General of the United States by taking matters to the Supreme Court on a basis which the Supreme Court has already signaled we don’t want to deal with and we’re unwilling to deal with.”

You agree it would—you may have answered this last time, but that it would devalue the currency of the office to request the Court to reconsider?

Mr. OLSON. That was the point that I believe I was making, and I had read that testimony.

Senator SCHUMER. OK. And then just on a related issue, which is the issue of the FACE law. I wrote the FACE law in the House, and I feel very strongly about it. Do you think it is constitutional?

Mr. OLSON. I have not read the statutes. I did read the testimony. I have not studied the statutes. I have read the statutes over. I agree that when people are exercising constitutional rights, they have to be protected by the laws of the United States, that those statutes are intended to do that, and I agree with Attorney General Ashcroft, when he said that people who are exercising their constitutional rights have to be free from intimidation or coercion in connection with exercise of those constitutional rights.

Senator SCHUMER. Will you seek an opportunity to argue to the Supreme Court that FACE is unconstitutional or that its scope should be limited?

Mr. OLSON. I have nothing in my mind with respect to doing so at all.

Senator SCHUMER. Thank you. The next question I have for—I guess it is again for you, sir, Mr. Olson. And that is: this is about Congressional power versus States' rights. There have been a whole bunch of recent decisions of the Supreme Court invoking States' rights to invalidate in whole or in part numerous acts of Congress, each of which was passed with bipartisan support. They include the Gun Free Schools Act, the Religious Freedom Restoration Act, a portion of the Brady Bill, the Age Discrimination Act, the Violence Against Women Act, and the Americans with Disabilities Act, parts of the latter two. Tell me your view about defending acts of Congress against challenges based on States' rights, in your job as Solicitor General?

Mr. OLSON. I think it is exceedingly important for the Department of Justice to defend acts of Congress whenever a reasonable defense can be made with respect to the acts of Congress, good-faith defenses can be offered. That area that you discussed, those cases involve the Commerce Clause, the Tenth Amendment and the 11th Amendment. The Supreme Court has made a number of 5 to 4 decisions with respect to that. The considerations by the Court in each of those cases are focused in part on the legislative history, the nature of the area of regulation, and with respect to the Commerce Clause cases, the record established both by Congress and the factual record presented by the litigants with respect to the amount of commerce involved.

But to circle back to the point that you were explicitly asking me about, defending acts of Congress, if we can find a way to do that reasonably and in good faith, to present arguments that we believe in to the Courts with respect to the defense of Congress, we believe it is very—I believe it is very important to Congress to have faith in us, that we will do our very best.

Senator SCHUMER. But what does "reasonably" mean? Some persons "reasonably" is another person's "unreasonably."

Mr. OLSON. I am using the words that previous Attorneys General, Assistant Attorneys General for the Office of Legal Counsel, and Solicitor Generals have made, that if there is a good faith, if we can in good faith find a defense, to provide a defense, we would bend over backwards to do that because the laws are passed here. It is not the responsibility of the executive to decide whether something is unconstitutional or not, unless there is—unless we cannot make a good-faith defense of the statute, we should do that, and let the courts decide.

Senator SCHUMER. Let me give you a specific example. Would you vigorously defend the Endangered Species Act?

Mr. OLSON. I can only answer that in the context generally that would fit within the same framework of what I just said. It would depend upon how that statute was being applied in a particular case, and those facts are important to take into consideration, but the standard from which we would operate, my judgment, is the one that I articulated.

Senator SCHUMER. And does the Endangered Species Act, again, an act that was passed with bipartisan support in the Congress, meet that?

Mr. OLSON. Well, on its face, the United States Supreme Court has found that it is not an unconstitutional statute. When it is being applied with respect to a particular subject matter, then a fact-based consideration would have to be given with respect to whether or not commerce is involved to support the justification of the application of the—

Senator SCHUMER. That is arguing the breadth of the law as opposed to whether the law should be defended or somehow overturned on a States' rights basis or anything else.

Mr. OLSON. I do not see—what I am saying is that the person against whom the statute is being applied in a particular case may say that there is not sufficient basis for application of the statute in that case, and then we have to look at that. On its face, I have not studied or made a determination of the statute itself, but it is my understanding of what the Supreme Court has decided, that it is not unconstitutional, and I do not have any view that it is.

Senator SCHUMER. One more question in the area of the Congress's power. In light of the Court's recent restriction of even the Commerce Clause power, as well as decisions limiting Section 5 of the 14th Amendment, these I think are—I mean I think the Supreme Court, at least the majority, wants to go back to the 1890's. I mean I find it absurd that in a world where we are supposed to be one world, they want to have 50 states make laws on things that 30 and even 70 years ago were determined within the purview of the Federal Government. And I think that will be a losing proposition somehow or other, just by the way the world is working, and becoming one world in terms of technological change. But that is where they are.

And so the Spending Clause, given their recent constriction of the Commerce Clause and Section 5 of the 14th Amendment, the Spending Clause may become a highly significant source of Congressional power. Can you just give me your general views on the scope of the Spending Clause powers, as well as whether you would argue before the Court for an expansive Spending Clause power?

Mr. OLSON. I think that, in the first place, the decisions that the Court has rendered, with which I am familiar with respect to the Spending Clause, have given Congress relatively broad latitude.

Senator SCHUMER. Yes, they have.

Mr. OLSON. To attach conditions to the receipt of Federal funds by states or local agencies, provided that Congress has made those conditions clear, so that the states can exercise a clear choice. There have been instances where the United States Supreme Court has said that to the extent that you are attaching a condition to the exercise of a fundamental right that could be taken away with respect to the Spending Clause, that could be an area in which the Court would look at it differently. But my understanding of it, to the extent that I have studied it at all, Senator, is that it is a relatively broad power, and it would be our responsibility to look in every way for ways to defend the exercise of Congressional power in that area.

Senator SCHUMER. Thank you. Well, that is good to hear.

I just want to go to one more question before my time expires, to Mr. Thompson. I do not know if you are aware of this, but my office conducted a study last year, which I thought was—the people who did it on my staff were just fabulous; it was ground-breaking—and we found that 1 percent of the gun dealers in this country are the source of 45 percent of the guns used in crime. In other words, there are some bad apples, and the gun runners, who go down to states with loose gun laws from my State of New York—these are criminals, and they will go to a Georgia—no offense—or a South Carolina, and they will buy 100 Saturday Night Specials, cheap handguns, and then they will drive them up and sell them on a street corner in New York City. And whatever we do in New York State does not make a darn bit of difference because of the Commerce Clause. We do not have a toll at the Hudson River to go check the trunk of everyone's car. So as long as South Carolina persists in having—just to pick an example—or Georgia, or any other state, persists in having much wider open gun laws than would be appropriate in my State, guns cascade into our State. But what we found in this study is not simply that they came from other states, but from a small, small percentage of bad dealers. In other words, the gun runners almost knew that if you go to this particular place, they are not going to check, they are going to look the other way, they may not make you wait the waiting period or use the insta-check or whatever. And yet, there are laws on the books that we have supported in this Congress, that have been pushed, frankly, by the NRA, that prevent a real crackdown on this 1 percent, such as the number of times an ATF agent can actually visit a dealer.

And I have proposed legislation that were for these bad gun dealers, not for anybody else, but the ones who seem to send a disproportionate amount of the crime guns into our stream of society, that we change the law and allow the ATF more vigilance and give more enforcement power.

I would ask you two question. What is your initial reaction to a change in the law like that? But second, what is your attitude about cracking down on some of these bad-apple dealers?

Mr. THOMPSON. Well, my initial reaction, Senator, is that I would be—I would urge your staff to share that study with me. I would be very much interested in looking at it and examining it myself. As I said in my opening statement, we have really got to do everything that we can to crack down on the use of guns, especially as it relates to violent crime. This terrorizes not only all citizens, but especially the low-income citizens and the minority citizens.

So my initial reaction is, that if that is a problem, we have got to do everything that we can to correct it, by legislation or by changing our enforcement priorities, whatever. And as I understand from what Attorney General Ashcroft has said, that tracing guns that are used in crimes is a top priority, and I certainly would want to echo that sentiment and do everything that we can to make certain that this problem, especially as it relates to the Northeastern States like New York, is alleviated.

Chairman HATCH. Senator, your time is up.

Senator SCHUMER. I thank you. Thank you, Mr. Chairman. I thank both of our witnesses.

Mr. THOMPSON. And I would like to see the—

Senator SCHUMER. I will send you that study. I will vote till after the vote probably, so you need to rest.

[Laughter.]

Chairman HATCH. We are going to keep the record open. Written questions can be offered and hopefully can be answered over the 2-week recess that we are going to have. I would hope that we could have our questions in—I have not chatted with the Democrat leader on the Committee, but I am hopeful that we can get all our questions in by the middle of next week, by Wednesday. Does that sound fair?

Senator SCHUMER. It sounds reasonable to me.

Chairman HATCH. Then I think what we will do is keep the record open until Wednesday of next week. That will give about a week and a half to answer the questions, and if you can answer them before then, and give these folks time, that helps us in getting you confirmed.

Senator Sessions, we will turn to you.

Senator SESSIONS. Thank you, Mr. Chairman, and it is a pleasure to be a part of this panel and to welcome you two nominees here today.

I think in both of these nominees we have men of extraordinary experience at the prime of their professional careers, who have had extraordinary background and involvement in many of issues that are important to this country. You understand the tension of being in the crucible of debate and advocacy. Yet at the same time, both of you have won praises from people of different political views. It is the kind of professionalism that I think we need in the Department of Justice. I believe both nominees possess the kind of maturity that the Department of Justice needs at this time. Frankly, the Department, in my view, is a bit shaky now, and it needs solid, mature leadership to bring it back to the highest ideals and to the greatest degree of professionalism possible. I hope and expect, by accepting this appointment, both of you will undertake that as one of your primary goals.

I have known Mr. Thompson for quite a long time. We were United States Attorneys together in the early 1980's, and during that time the President declared that we would have an Organized Crime Drug Enforcement Task Force. OCDETF we called it. They always wanted a better name, but never came up with a better one. Larry Thompson was given the responsibility of organizing 12 different districts in the southeast. He did so with an extraordinary skill and ability that unified those 12 United States Attorneys. This was a difficult task because they were being asked to subordinate decisionmaking on major cases and give it to a brother United States Attorney in Atlanta. There were a series of these core-city United States Attorneys. Larry Thompson led our task force in an extraordinary way.

And, Mr. Thompson, you are going to get to display those skills again, because the Office of Deputy Attorney General has under its supervision, directly and indirectly, and through the others, the Bureau of Prisons, the FBI, the Drug Enforcement Administration, the Immigration Service, United States Marshals Service, and 94 United States Attorneys, all thinking they have been anointed by the Lord.

[Laughter.]

Mr. THOMPSON. I thought we had gotten those problems resolved in the intervening years.

Senator SESSIONS. I do not think so. There are tremendous turf battles you will be facing.

Chairman HATCH. Yes. If you think they think they are anointed by the Lord, you ought to see this bunch up here.

[Laughter.]

Senator SESSIONS. Well, it is a challenge for leadership. And I want to say that you had a positive leadership style. You have a leadership style which I admire so much because it is always based on the ultimate goal of achieving the most justice for the most people, and really honoring the taxpayers' dollars that have been given to the Department of Justice.

Let me ask you, do you look forward to trying to make this vast conglomeration of agencies that the Department of Justice is comprised of, work together well?

Mr. THOMPSON. Well, I do look forward to it. As I said, Senator Sessions, I have a great deal of respect and admiration for the men and women of the Department of Justice. There are many talented, hard-working, dedicated people in the Department, as you know, as a former United States Attorney.

And you are giving me too much credit. The success of our task force was because each of the 12 United States Attorneys believed that our ultimate goal was to try to crack these drug-smuggling and trafficking organizations, and everybody pulled together as a team, and we were able to do that.

And I know it will be a challenge, but I am convinced that if we appeal to the good nature of these hard-working professionals, we can do it, and I am certainly going to try to do it.

Senator SESSIONS. Well, that regional task force led the Nation, as I recall, in convictions and many other statistical categories under your leadership. It was remarkable, and I think those same skills will be needed here.

You were asked by Senator Leahy, who is very concerned, and rightly so, about problems with the implementation of the death penalty. I would just like to point out a fact, and ask you a question about it. I would point out that the Attorney General of the United States has set up a review process that requires any United States Attorney in any of the districts of the United States, before they can indict someone for a capital crime, to have that reviewed by the Department of Justice with the goal of achieving fairness and uniformity and eliminating disparity of results. If not results, at least fairness in disparity among cases, not results.

Do you believe that is a good procedure, and will you maintain that?

Mr. THOMPSON. I have reviewed the procedure that is set forth in the United States Attorneys' Manual. It is a very exhaustive procedure. There are many different levels of review, chief among which is that the local prosecutor is not allowed to threaten the use of the death penalty in order to secure some kind of plea or agreement with the putative defendant. I think it is a good policy. If there are any problems with it, Senator, I hope that you or the other members of the Committee will let me know, but while I

have indicated that I certainly favor the racially neutral application of the death penalty, we have got to do so with all care and due consideration like the procedures set forth in the US Attorneys' Manual, and I certainly will continue those. And if there are any problems with them, try to remedy those problems or improve them.

Senator SESSIONS. Well, I think that is correct. I think that was a good decision to have a uniform review, because it is important to try to have fairness in the application of the law. I thought it was particularly strange and odd that the Attorney General of the United States, Janet Reno, and the President of the United States, who appoints the Attorney General, President Clinton, stayed the implementation of death penalties, claiming that the process was somehow flawed when it was their process. They were running the show. He was the President and she was the Attorney General, and no death penalty was ever approved that the Attorney General did not personally sign off on, is my understanding of it. So I thought that was odd, but I do think it is a high duty to make sure that the death penalty is fairly implemented.

You were asked about gun prosecutions and I hope you will look at gun dealers. I have personally prosecuted gun dealers as a Federal prosecutor. But I did notice after I came to the Senate, that under the Clinton Administration, all gun prosecutions had dropped 40 percent at one point. I asked Attorney General Ashcroft if he would make it a priority to raise up the profile of prosecutions of those who violate existing Federal gun laws, and he said that he would. As chief administrator in the Department, will you make that same commitment?

Mr. THOMPSON. Oh, absolutely. And I agree wholeheartedly with his decision to make that a priority.

Senator SESSIONS. I am willing to predict that under your leadership, that we will see a significant improvement in the number of cases prosecuted. It will not take a lot of new personnel and a lot of new money. It is a question of priorities and how the previous administration could have allowed such a major drop in those prosecutions, it always bothered me. They did get them back up in the last year or two after a number of hearings that we held, but I still think there is potential to increase those prosecutions.

Mr. Olson, as Solicitor General, you will have opportunities to advise the President. In the most important legal matter he ever had, he entrusted his faith to you, which is a compliment. Are you prepared to tell the President "no" if he is in error on a legal question?

Mr. OLSON. Yes, I am, Senator. I did have experience as Assistant Attorney General, as you know, in the Office of Legal Counsel. One of the responsibilities of the person holding that position frequently is to say "no" to the White House or to other parts of the executive branch. It is never pleasant to do that, but—

Senator SESSIONS. Would you say it even to the Chairman of the Judiciary Committee?

Chairman HATCH. Let us not get too far here.

[Laughter.]

Mr. OLSON. I do not think I have jurisdiction.

[Laughter.]

Mr. OLSON. I think that is one of the things that I learned when I was serving in the Justice Department before, that it is exceedingly important for the President, for other officials in the Justice Department and in the executive branch to give some people in the administration the responsibility and the burden of calling them as closely as they can call them with respect to what the law is and what the law can permit, and as best as possible, to set aside policy considerations, and to be willing to say no.

Now, people from the President to the Attorney General on down have got to be willing to encourage the person holding that position to do so, and then the person has to be willing to do so. I do feel that I can do that. I feel very strongly that President Bush believes in that, and Attorney General Ashcroft believes in that.

Senator SESSIONS. I think that is important. You want to promote the law in the ways that you feel are just. However, if you believe and can establish to your own satisfaction that something is improper or not legal, you should feel free to speak out on that.

Mr. Chairman, I think both of these nominees are extraordinary men of achievement, experience, and ability. I believe they have the highest sense of integrity. They won the accolades and respect of even those who have opposed them over the years. I think they are the kind of leaders that can revitalize the Department of Justice. It is a Department I dearly love, having spent 15 years full time, practicing in the Department of Justice. I think it is the greatest Department, frankly, and I feel very comfortable having these gentlemen as leaders in it.

Chairman HATCH. Thank you, Senator.

Let me just make one thing clear. Senator Schumer raised an important issue with Mr. Thompson regarding the role of the Senate and advise and consent duties with respect to judicial nominations. I think I have been fair and had a fair policy, which I had asked the Clinton Administration to follow. Now, many times they did not. But to reassure my colleagues on this important issue, I would like to just quote a couple paragraphs, or this actual policy of this committee, and read to them a letter I had written to the Clinton White House. And I think it basically sets the policy, and I expect this administration to follow it.

"Please find attached a February 3rd, 1995 letter from myself to then White House counsel Abner Mikva, and a June 6, 1989 letter from Senator Joseph Biden to President Bush, outlining the committee's blue slip policy."

Now, Senator Biden's letter explained the return of a negative blue slip ordinarily does not preclude consideration of a judicial nominee, but is given substantial weight by the Committee in its evaluation of the nominee. Senator Biden also emphasized the importance of pre-nomination consultation by the administration, with home state Senators, stressing his belief, that, quote, "The nominations process will function more effectively if consultation is taken seriously", unquote. Thus, as Senator Biden also wrote, quote, "If such good-faith consultation has not taken place, the Judiciary Committee will treat the return of a negative blue slip by a home state Senator as dispositive and the nominee will not be considered", unquote.

"The Committee has continued to implement Senator Biden's policy and practice. Toward that end the Senate expects genuine good faith consultation by the administration with home state Senators before a judicial nomination is made, and the administration's failure to consult in genuine good faith with both home state Senators itself is grounds for a Senator's return of a negative blue slip."

"Where the administration has failed to provide to provide good-faith prenomination consultation, a negative blue slip is treated as dispositive and precludes Committee consideration of a judicial nominee."

Now, that is important that we all understand that because this is a new administration and they are really getting their feet on the ground. There are going to be some mistakes made, and I am hoping our colleagues will be considerate of that, that they are way behind the curve. We are going to soon have well over 100 vacancies in the Federal Judiciary, and I intend to continue this policy and this process. I think it is a fair one. I will urge the White House to do that as well. We also asked the Clinton White House to do that. That type of consultation is one thing, and in my view, the proper, quote, "advise and consent", unquote, rule of the Senate.

But if any of our colleagues here want to veto the President's constitutional prerogative to make his appointments with the advice and consent of the Senate, that is a different matter, and one which I think diverges from the policy of this Committee since as far back as I can remember, and that is 25 years, since Senator Kennedy was Chairman of this committee. So I just want to get that on the record so everybody understands that there are joint obligations. The White House needs to consult and we need to consult. We need to work together on these judicial nominations, and we are going to count on you, Mr. Thompson, to help see that that process goes properly, and I am going to speak further with our colleagues down at the White House, you know, Counsel Gonzalez and others, so that we make this process worthwhile.

Right now we have had kind of a rocky start, but hopefully, it will all settle down and we will satisfy our colleagues on the other side of the table, and hopefully as well, our colleagues on this side. But I just thought I would put that in the record to make it straight.

Let us go to Senator Durbin.

Senator DURBIN. Thank you very much, Mr. Chairman. And I regret that neither Senator Leahy nor Senator Schumer are here to respond with specific information about our experience.

Chairman HATCH. I will keep the record open so they can respond to that, because I would be happy to have any response.

Senator DURBIN. The practice that has been followed in the 4 years that I have been in the Senate is different than what you have just described. In that time, one Senator could stop a nominee from a state. And there have also been times when members of the Senate Judiciary Committee, not even from the same state as the nominee, could stop a nomination. And I think that I go along with your premise—

Chairman HATCH. That has always been true, Senator. If Senators have—I mean, we cannot control every individual Senator,

but we have tried to implement that policy, and in the vast majority of cases that policy has held. And I intend to implement it, although I do not—like I say, I am not God. I cannot control everybody on this committee.

Senator DURBIN. I will defer to Senator Leahy and Senator Schumer on this issue, but I think we need to have an Executive Session among the members to make certain there is an understanding.

Chairman HATCH. We will.

Senator DURBIN. I do sincerely regret that we have two nominees today, because 15 minutes is not enough for posts of this importance to be considered in tandem, and I hope—Mr. Thompson, I thank both you and Mr. Olson for coming by my office, and I hope to be able to ask you a few questions in the allotted time, but I am limited and I want to address several questions to Mr. Olson.

Mr. Olson—I wonder if this microphone could be changed a little bit here. It is kind of talking back to me.

Chairman HATCH. Is there any way of getting that so it does not have a—

Senator DURBIN. I could perhaps change it.

Chairman HATCH. Why don't you change mikes?

Senator DURBIN. Is this any better. I think it might be. Thank you.

Mr. Olson, as I look at your background, it is clear that you are an accomplished lawyer. For the President of the United States to entrust his political fate to you, as he did before the Supreme Court, really speaks to your talent and his admiration for your skill. But I think you would also concede that you have been a very active political lawyer in the course of your practice.

As I survey the list of Solicitors General of the United States, I cannot find any parallel in history of anyone who has been so actively partisan in his legal practice, and then went on to be the Solicitor General. The closest is Thurgood Marshall, who was clearly quite opposite you in political philosophy. But can you think of a former Solicitor General who has been so actively involved in politics, in his writing, in his practice, who then went on to have the position you are seeking?

Mr. OLSON. I have not made a comparison of previous Solicitors General. It is a distinguished list. Thurgood Marshall was very much involved in litigation along the lines that were consistent with the responsibility that he had. Solicitor General Drew Days had been Assistant Attorney General in the Civil Rights Division, and had practiced with the NAACP Legal Defense Fund for a number of years. In fact, that subject was discussed at his confirmation process. Rex Lee, who was mentioned this morning, had been involved in litigation of a variety of sorts.

Senator DURBIN. I mean of the political nature. I mean, some of the things that you have done—

Mr. OLSON. Well, I wanted to put that in context. I think that—I went back and looked over what I had been doing over the past 20 years or so. I would say probably 97 to 98 percent of my practice is commercial litigation, commercial litigation in the context of representing banks or insurance companies or the automobile industry, or other matters such as that. There are some—by the nature

of things, if you represent a candidate for President of the United States, and that case goes to the Supreme Court, it draws a lot of attention. And I have participated. I have been blessed to have the opportunity to participate in some cases that have involved issues that have gone to the United States Supreme Court, and they attract attention. I do not know that I call many of those cases political cases. They are cases that involve important policies of our country, and I feel that it is important and helpful to have had the experience with constitutional law in a variety of different areas.

Senator DURBIN. Let me be specific. When you visited me yesterday in my office, I talked about the question of recusal, and whether or not a Solicitor General should, on certain occasions, recuse himself from considering a case because of an obvious conflict of interest, impropriety, appearance of impropriety or a bias in the case.

I want to go back to the question asked by Senator Feinstein on some of your writings, which I have read since our meeting. And I have to tell you that I agree with her that some of the things that you have written make it very clear that you have some very strong feelings politically, particularly as it relates to Democrats in general and the Clinton family in particular. This article of yours, "The Most Political Justice Department Ever", from the American Spectator, you write, and I quote, "Bill Clinton's worst nightmare is a George W. Bush appointed Attorney General, who will have the courage to pry open the secrets that the Clinton Administration has kept during its corrupt reign, and a Congress that will keep the Justice Department shredding machines out of operation between November and the Inauguration." End of quote.

I want to ask you for the record here what I asked you in my office. Based on your involvement with the pseudonym used to publish an article concerning alleged crimes against the Clinton family and others in the administration, the representations you have made during the course of all of the impeachment hearings and the like, let me ask you: do you think it would be appropriate for you, as Solicitor General, to consider any case involving President Clinton, his family, or members of his administration, whom you have named in your articles?

Mr. OLSON. I think as I told you when we visited together in your office, that that raised a very important and legitimate question. What I would do—I think that the answer probably would be that it would be appropriate to recuse myself. But before making any recusal decision along those lines, I would consult with the ethics officials in the Department of Justice, and consider their—and take their advice into consideration. I do agree with you, that what I think is the import—what I know is the import of your question, that appearance with respect to fairness and even-handedness in the Department of Justice is exceedingly important.

And one of the things that I was complaining about—let me put it that way—in this article that you just referred to, is that I felt that there was—for the reasons I expressed in that article, that the appearance of partisanship had crept into the implementation of some decisions in the Department of Justice. And as a prior Justice Department official, I was concerned about that. I was concerned enough about it to write an article setting forth what my views

were, so that people could read them and disagree with them or judge them as they saw fit.

By the same token, I think I have to be judged by the same standards, and to the extent that I felt that my personal involvement in a particular issue would make it inappropriate for me to handle a case, I would recuse myself, but as I said before, I would also feel that it would be important not to take that step exclusively by myself, but to consult with these people that have been created in the Department of Justice, who are there from administration to administration—they are not political people—who are experts on that.

Senator DURBIN. Many of those same people have been criticized by members of this Committee during the course of the Reno administration, even though they were career employees. So I hope that you will follow that standard. I think it is appropriate, and I think your answer is appropriate.

Let me ask you a few specifics. Last year you invited the Supreme Court to overturn the *Miranda* case. When the Attorney General spoke to us in the nomination process, he talked about settled law. Do you view the *Miranda* decision as settled law?

Mr. OLSON. What I did—yes. The Supreme Court made it clear in the *Dickerson* decision last year that it regarded it as settled law. I think it was a 7–2 decision. I believe it was written by the Chief Justice of the United States. What I did in that case was file—the Supreme Court had already decided to take that case. We were asked by the Maricopa County law authorities in Arizona, where the *Miranda* case had originally come from, to file a friend of the court brief on behalf of that county, expressing their views with respect to the Federal Statute which had been enacted by Congress. And this goes back to the issue of defending acts of Congress. So that was an issue in that case. But I agree—

Chairman HATCH. And I might add, that was a case where the current Solicitor General refused to uphold the Congressional enactment, taking the opposite position.

Mr. OLSON. The Solicitor General determined not to defend the act of Congress, and the result of that was that the Supreme Court then appointed a law professor to defend the Congressional prerogatives in that case.

But I do agree with the import of your question. The Supreme Court did consider that case. It made it very clear that *Miranda* is not only a part of the legal culture, but a part of the culture itself of this country, and it was a fairly clear pronouncement. I would have no reason to quarrel with that. The Supreme Court, as Chief Justice Marshall said, has the responsibility to declare what the law is, and it has done so.

Senator DURBIN. Along the same line, the partial birth abortion ban has been a very hot topic on Capitol Hill for a number of years. Many of us believe that this ban should include an exception for the health of the woman, as well as her life. The Supreme Court, in *Stenberg v. Carhardt*, struck down a Nebraska law that purported to ban the so-called partial birth abortion, but did not provide an exception for the health of the mother.

If legislation purporting to ban so-called partial birth abortion, without an exception for the health of the woman is introduced,

and your advice is sought regarding its constitutionality or whether appeals should be taken, do you consider the *Stenberg* decision settled law, that unless it includes an exception for the health of the mother, you would not pursue it?

Mr. OLSON. I do not think the Court went that far in that case. One of the bases for the Supreme Court's decision, as I read the various different opinions by the Justices in that case, is the vagueness of the—I think it was a Nebraska statute in that case. It is a very complicated and a very important issue, and all I could say with respect to that, it would require—to the extent it was an act of Congress—looking at it very, very carefully in terms of what Congress had decided to do, and also consider very carefully what the Supreme Court decided in that case. I hesitate to answer that question in the abstract without knowing the specifics of the statute, but I cannot stress enough how important I understand the issue is to so many people in this country, and how important it is in connection with something like that, to listen to other people other than the people in the Office of Solicitor General, to people who have views on the subject, who want to talk about it, who want to write arguments that would be submitted to the Solicitor General, and in that case, take extremely careful consideration of both—of a Supreme Court decision that has just come down, and an act of Congress.

Senator DURBIN. I just want to make one thing clear for the record. I believe the *Stenberg* Supreme Court decision says it is the settled law of the land, that any such prohibition against abortion procedures that does not include the health of the woman, violates *Roe v. Wade*. If you can answer yes or no whether you agree with my conclusion, I would appreciate it.

Mr. OLSON. I cannot answer yes or no with respect to that, because I think one of the problems with the Nebraska statute was the definition of "health" and under what circumstance that would be considered, and I just do not know enough. I would hesitate to do that.

Senator DURBIN. Let me ask you as well, there have been questions raised in staff inquiries about your role in a pardon for Armand Hammer. As I understand it, you represented Mr. Hammer; is that correct?

Mr. OLSON. I did, but not at the time he received the pardon. I did represent him in connection—may I explain?

Senator DURBIN. Sure, of course.

Mr. OLSON. I did represent Dr. Hammer, along with a prominent law firm in Philadelphia in connection with the preparation of his application for a pardon. We prepared a pardon application and submitted it to the pardon attorney in the Department of Justice according to the regulations that existed. It was staffed up by the Department of Justice. It went through the Deputy Attorney General and the other agencies in the Department that were involved. I do not know what the recommendation of the Department was to the President. It got to the White House, and we were then told that the President was not going to grant the pardon. That was during President Reagan's Administration. He declined to issue a pardon. My representation ended at that point. Dr. Hammer was

given a pardon by President Bush, but I was no longer his attorney at that time.

Senator DURBIN. Thank you. That clarifies that. May I ask you a question on *Bush v. Gore*?

Mr. OLSON. Yes.

Senator DURBIN. You remember that case, do you not?

Mr. OLSON. It happened so fast, I am not sure.

Senator DURBIN. You argued successfully before the Supreme Court, and you asserted that the use of different procedures for conducting a statewide recount violated the Equal Protection Clause. As you know, however, the procedures established by localities for elections themselves, often vary widely from county to county. If different procedures for a statewide recount are unconstitutional, would it follow that different procedures in carrying out an election on a statewide basis are similarly unconstitutional?

Mr. OLSON. No. The Supreme Court—not necessarily. The Supreme Court made it very clear in that decision that it was a particular set of circumstances which included changes by the Florida Supreme Court in the timetables and the procedures that had been adopted prior to the election after the election. And another factor was that the standards by which the ballots were being evaluated were varying from not only county to county, but canvassing—different portions of the Canvassing Board’s responsibility from one group to the next group, and that they were changing from day to day. We raised the question in the second of those two cases, that where votes are being—or ballots are being evaluated by different standards within a state, under rules that are changing after the election, it can raise equal protection concerns with respect to the evaluation of ballots differently in different portions of a state. Seven Justices of the Supreme Court agreed that there were concerns under the Equal Protection Clause under those circumstances, but the Court was also working very rapidly because of constraints imposed by the Constitution and by Federal statute, and the Court therefore made it very clear to say, “The decision that we render in this case applies to the facts of these cases”, and I think the Justices would say, “We would have to look at the next case and the circumstances of that case.”

Senator DURBIN. Well, we obviously disagree on some of these, but it just strikes me that if I live in a state that has paper ballots, punch cards, optical scanning, God knows what else, depending on the county, the jurisdiction, their decision, we have, going into an election, different circumstances facing different voters who are casting votes in the same election. If the election judges in one precinct decide if you spoil your ballot, you get a new one, and in other precincts, you do not get a new one, then we have some diversity as to whether or not the elections themselves are being managed in the same uniform way across the state for equal protection.

So I think it begs the question to say it makes sense for recounts, but it does not make sense for elections.

Mr. OLSON. I am not saying that, and I understand your question. I also understand the point that you are making. It is a valid point. I just do not know what the answer would be. Florida itself had three or four different ways of initially counting the ballots in different parts of the State of Florida. That was not an area that

the Supreme Court focused on in *Bush v. Gore*. But I think you make a very valid point. It raises an interesting question. Under what circumstances can different methods be used to count ballots? It also may make a difference whether we are talking about elections for President under the authority set forth in Article II, Section 1 of the Constitution or other types of elections. It is a complicated area, and many people have raised questions like the ones that you quite properly raised. I just do not know what the answer would be, and depending upon what the circumstances are.

Senator DURBIN. Thank you, Mr. Olson.

Mr. Thompson, you appear to have escaped the savage ritual as far as I am concerned, but thank you for joining us today.

Mr. THOMPSON. I would like to say I am sorry, but I have to be truthful.

[Laughter.]

Chairman HATCH. Well, your time is up, Senator. Let us go to Senator DeWine.

Senator DEWINE. Thank you, Mr. Chairman.

Mr. Thompson, being the Attorney General or Deputy Attorney General is about setting priorities. That is what, obviously, governing is. But, I think, particularly as Attorney General, you have so much discretion, and such limited time and resources, that the cases you decide to emphasize really set policy. You set policy every single day. I am glad to see in the previous questioning and in your prepared remarks, you talked about gun prosecution, the prosecution of people who use a gun in the commission of a felony, people who are convicted felons, who use guns in violation of the law, and I am delighted to see that is going to be one of the top priorities of your administration.

I would like to mention a couple of other things. What you will find is—and I am sure both of you have already seen, and knew before you came in here today—these hearings are not just about you answering questions. They are also about giving Senators the opportunity to talk about what we think are our priorities, so we are not really bashful about that. But I am glad to see your comment about gun prosecution. It has been an area that I have been very vocal about. I think it is the right priority for the Department of Justice. It makes sense. It will save lives. It will get the right people off the streets.

I would like to mention a couple of areas I think it should be part of your priority. One is in the development of crime technology. I sponsored a bill several years ago, and we passed actually in 1998, the Crime Identification Technology Act. This act supplies money for DNA technology, automated fingerprints technology, and ballistic comparisons, as well as the refinement and continued development of the criminal record system throughout the country. Now, those are four areas where I think the Federal Government can continue to play a major role, not just in developing the national system, but understanding it is not just important for the FBI or other Federal agencies to have this system online. It is also important for the local law enforcement to have this. Over 95 percent of our prosecution, as you know, is done at the local level. That is where the investigation is, so the ability of the local community to plug in to the national system is very, very important.

I hope that the Attorney General's Office and Department of Justice would support adequate funding, not just for my bill, but for these four areas of crime technology. It matters a great deal. It is important for the local jurisdictions. It is important that we have developed this Nationwide system. And again, it is a question of priorities, where we, as a country, put our money, when—our ability to solve a crime in Xenia, Ohio, depends on whether or not Chicago inputs a criminal's record before that criminal ends up in Xenia. We are all tied together, and what happens in one jurisdiction affects the ability of another jurisdiction to solve a crime. I will ask you to comment about that in a moment.

Also, you commented about another area that I am very concerned about, and that is international parental kidnapping. We have a huge problem in this country today. A typical case involves a couple who gets married, one is a foreign national, one is a US citizen. They settle down in the United States and begin having a family. One day the person who was born in this country looks up and the person that he or she has married is gone with a child or gone with two children, and they are in France or they are in Germany, or they are Lord knows where, and that child is gone. And what I have seen, frankly, from the Justice Department in the last few years is a lack of interest in these cases, a lack of—I do not know any other way of saying it, just a lack of interest. And it goes right down to the US Attorneys around the country. I hope that would be a priority within the Justice Department, understanding there is a limit to what we can do, understanding we have a State Department to deal with, and understanding we have foreign governments to deal with. But I think that if it is emphasized, we can make some progress in this area.

The fourth area I would like to mention to you is antitrust. I am the Chairman of the Antitrust Subcommittee. I did not ask Attorney General Ashcroft to comment about any particular cases and I will not ask you to do that, but I will ask you to comment in general about antitrust. I happen to think that it is a good thing we have antitrust laws. Antitrust laws work when there is the threat that they will be used. They do not have to be used every day, but there has to be a credible threat that the Justice Department will use the antitrust laws when there is an appropriate case.

And so I will ask you to comment on those four issues, beginning with gun prosecution, crime technology, international parental kidnapping and antitrust.

Mr. THOMPSON. Well, with respect to gun prosecution, Senator, as you know, that is a top priority of Attorney General Ashcroft. I wholeheartedly support it for a number of reasons, but a reason I do not believe I have mentioned to the members of the committee, is that with respect to the safety of our law enforcement officials. The use of illegal guns is the single highest cause of death of law enforcement officials, the people who are laying their lives on the line to make our streets safe. So it not only redounds to civilians, it is going to help law enforcement officials if we can get our arms around that.

With respect to technology, I agree with you again. We really need to stay ahead of the learning curve in terms of law enforcement. I understand that funding for the legislation is a priority of

the administration, and as I understand, Senator, you were a former prosecutor. Not only is 95 percent of the prosecutions in this country handled at the state and local level, perhaps a larger percentage of successful prosecutions derive from leads that are developed with state and local law enforcement agencies. So we really need to make certain that this kind of technology gets in the hands of state and local law enforcement, so not only they can do their jobs better, that will help the Federal Government too.

International parental kidnapping, as I have tried to wind down my law practice, I have not—I really have not studied that issue, and I look forward to working with you and your staff and getting up to speed as some of the law enforcement problems with respect to that issue, but I simply do not know that much about it.

I am not an antitrust legal expert or scholar—I am sure you are going to be asking my colleague, Charles James, a lot of questions in that area—but I will tell you, as a criminal defense lawyer, I have handled a number of price-fixing cases, routine price-fixing cases, which are handled by the Antitrust Division. And we have some very good people in that area and who are doing a good job across the country in investigating criminal price-fixing.

I can offer an observation, perhaps it is an opinion, but that is probably one of the most prevalent white-collar crime offenses that is out there. It has a great effect, harmful effect on our economy, unfair competition. And I certainly would, as the deputy attorney general, make certain that not only do we pursue other kinds of structural antitrust issues, I want to make certain that we dedicate our efforts to criminal price-fixing, criminal antitrust issues, and bringing people who commit those kinds of serious crimes, and I consider that a very serious crime, bringing those people to justice.

Senator DEWINE. Mr. Thompson, thank you very much.

Thank you, Mr. Chairman.

Chairman HATCH. Thank you, Senator.

We will turn to Senator Leahy. I do not know whether we have any other questions from our side, but I would like to continue the 15-minute round so Senator Leahy and others have enough time to ask their questions.

Senator LEAHY. Thank you, Mr. Chairman. Because this is unusual, and this is the only time, as far as I can tell, in the history of this committee, that we have had the nominees for deputy attorney general and solicitor general here together, Mr. Chairman.

Chairman HATCH. Excuse me, go ahead.

Senator LEAHY. I was just going to say, insofar as—

Senator KYL. He was just complimenting you for breaking precedent.

[Laughter.]

Senator LEAHY. I am saying, contrary to the impression that the Chairman gave earlier, this is the only time in history we have had the deputy attorney general and the solicitor here today. So, in fairness to having started with Mr. Thompson in the first round, I will start with Mr. Olson on the second.

Mr. OLSON. Thank you.

Senator LEAHY. Do not be too quick.

[Laughter.]

Chairman HATCH. However, the point was it has been done, maybe not exactly these two—

Senator LEAHY. But never—

Chairman HATCH. Not these two offices, but it has certainly been done.

Senator LEAHY. I will never get the last word.

Chairman HATCH. No, that is not true.

[Laughter.]

Senator LEAHY. Are you finished?

Chairman HATCH. Not yet.

Senator LEAHY. Is this a new round for you?

Chairman HATCH. I have never taken even a shot at it yet, and I have made a couple statements here.

Senator LEAHY. We would be happy to—

Chairman HATCH. No, I am happy to turn the time over to you.

Senator LEAHY. It is possible we could finish this today, but I doubt it.

Chairman HATCH. I intend to finish—

Senator LEAHY. In the materials filed with the committee, Mr. Olson, you listed affiliations with a number of groups and organizations that are overtly and actively political, some of which have taken legal positions to advance certain public policy. I want to balance these a little bit so I understand.

You worked with the American Spectator Education Foundation, the Lawyers Division of the D.C. Chapter of the Federalist Society and so on. You have resigned, as I understand, from the board of the American Spectator Educational Foundation; is that correct?

Mr. OLSON. In 1999.

Senator LEAHY. Thank you. And what is your intention with respect to continuing membership and participation in each of the other groups with which you have been affiliated?

Mr. OLSON. I have resigned from any position on the advisory boards of the organizations that are listed there. I have already resigned from there. The—

Senator LEAHY. Does your involvement with the American Spectator Educational Foundation, the Federalist Society, the Independent Women's Forum, the Washington Legal Foundation in any way diminish your ability to act independently as solicitor general?

Mr. OLSON. You did not mention the American Bar Association.

I do not think that my involvement—I have resigned from the advisory boards of all of those other organizations. I remain a member of the American Bar Association, I remain a member of the Federalist Society. I do not intend to hold any positions with respect to any of those organizations.

I do not believe that my past—

Senator LEAHY. I am not a member of the American Bar Association. I resigned when I became a Senator because I did not want it, in any way, to interfere with the way I vote.

Do you think that your past position would give a perception of nonimpartiality?

Mr. OLSON. I do not think so. I think that—

Senator LEAHY. Let me go to a couple of the things.

Let me take some of your writings in the American Spectator, The Washington Times, and elsewhere, and some of the tone and

rhetoric you have employed to criticize the former President, and the former First Lady, Attorney General Reno, and others, and members of this committee. I know you have had occasion to review your speeches and writings, as you assembled them, both to submit to the White House and to this committee.

Is there anything, as you sit here today, is there anything in that body of speeches and writings, and you have reviewed them, as distinguished from your legal writings—I am not talking about legal writings when you are an advocate for a client, but your speeches and writings—is there anything that you would like to take back, rephrase or clarify?

Mr. OLSON. I am sure that there would be things if I had gone through everything that I have said, with the wisdom of hindsight and experience. I am sure that there are things I would both say differently or might not say at all. I did not go through them with the purpose of singling out anything in that regard, but I have no doubt that there are things that I wish I had said differently.

Senator LEAHY. Let me go to a couple of specifics, and I suspect, though, that you did glance through a number of them.

Mr. OLSON. I did glance through as many as I—

Senator LEAHY. You did write them.

Mr. OLSON. I did write them, yes.

Senator LEAHY. You wrote, last year, an article for the American Spectator, very critical of the Department of Justice, under Janet Reno, and Senator Feinstein has referred to this. I disagree with your opinion of Janet Reno. I was, as I said to you earlier, I was impressed by the fact that during the past 8 years, for the first time, we have seen, every single year, the crime rate go down, something that we have not seen, notwithstanding the rhetoric of both Republican and Democratic administrations previously. But notwithstanding our difference of opinion about Ms. Reno, and you stated your opinion very strongly, I would like to ask you about a couple things in there.

You say, “The Department of Justice and its officials traditionally have been held to a standard of independence and non-partisanship not expected of other Federal agencies.” I think we would all agree with that. You said, “The President must never inject his personal or partisan political impulses into individual DOJ decisions,” and that is your position today, is it not?

Mr. OLSON. Yes, I feel that way.

Senator LEAHY. I beg your pardon?

Mr. OLSON. Yes.

Senator LEAHY. You criticized Janet Reno for asking United States attorneys from the previous administration to resign. You explained that, “In order to maintain continuity in thousands of pending prosecutions, as a statement to the public, that elections do not influence routine law enforcement. The Nation’s top prosecutors are traditionally replaced only after their successors have been located, appointed, and confirmed by the Senate.”

But yet, today, all over the country, U.S. attorneys are being asked by President George W. Bush to vacate their offices. We have not received one single nominee for U.S. attorney from anywhere in the country sent to the Senate. So do you think that President Bush and Attorney General Ashcroft have made a mistake in re-

questing these U.S. attorneys to resign or was it only Attorney General Reno who made a mistake in asking them to resign?

Mr. OLSON. What I meant by that is that the decision to fire or remove all of the United States attorneys on very, very short notice at one time, without having given any consideration to the individual situations in any of the districts in which there were pending cases, created that appearance, in the context of the other things that I mentioned in that article.

I think that I said in that article or I tried to say in that article, and this is one where it is probably, I would probably say that I could have written it better, but the cumulative effect of the decisions and actions that I describe in that article, I did believe created the impression of partisan involvement in the Department of Justice, which I thought was not good for the administration.

Senator LEAHY. Because they were changing administrations or a Democratic administration coming when there had been a Republican administration, is that part of the reason?

Mr. OLSON. No, I believe that the specific decisions, and specific instances, and specific actions that I mentioned in the article, taken cumulatively, which included the decision to remove all at once, all of the United States attorneys, irrespective of the prosecutions that were pending in that case, which had never, as I understood it, been done before, I thought that was a—created the beginning of a process which played itself out in ways which I think were unfortunate for the Department.

Senator LEAHY. But now that nearly all of the U.S. attorneys are being asked by this administration to do the same thing, it does not create that kind of an impression?

Mr. OLSON. I do not believe that all of the United States attorneys have been asked to leave, and I think that—

Senator LEAHY. I did not say all of them, I said virtually all of them.

Mr. OLSON. Well, I am not familiar with the numbers, and I think that the circumstances are different, but I don't know all of the details.

Senator LEAHY. Let me ask you this: You criticized President Clinton's appointment of, among others, the assistant attorney general for the Office of Policy Development, the assistant attorney general for Legislative Affairs, the assistant attorney general for the Civil Division, and the assistant attorney general for the Antitrust Division because one had known the First Lady in college, one had a brother who worked in the White House, another was related to the Vice President, another was the wife of a Democratic Senator.

Now you made no specific mention about what kind of work they did in office or the reputations and qualifications they had, which I recall were sterling, but you said they were too partisan. Now I do agree with you that evenhandedness and nonpartisanship should apply to the executive branch. But if it was wrong in that case, even though these people were all extremely well-qualified and did a good job in office, do you think it is wrong of President Bush to appoint Secretary Evans, a long-time fund-raiser, to the Department of Commerce, and I voted for him; Secretary Chao, the wife of a Republican Senator, to the Department of Labor; or Sec-

retary O'Neill, an old and close friend of Vice President Cheney, to the Department of Treasury; or Secretary Martinez, a close political ally of the President's brother to the Department of Housing and Urban Development—and, as I said, let me just finish, I voted for all of those—or Alberto Gonzalez, an appointee of then-Governor Bush, to the Texas Courts?

Is it not partisan or is not a question of their independence, with their connections to the Bush administration, when you had somewhat similar connections to the Clinton administration, and it was wrong to appoint them in the Clinton administration?

Mr. OLSON. What I meant was that, as I said in the beginning of the article, I was focusing only on the Department of Justice, and not the other agencies of Government, although one could say, I suppose, similar things with respect to the Department of Defense or the Department of State.

So I was just focusing on the Department of Justice, and I was not referring with respect to any one of the individual appointments there, but the cumulative effect of that collection of appointments and relationships, when taken together with the other issues and decisions that I referred to in that article; again, including the removal, wholesale, across-the-board, of the United States attorneys, and those particular appointments, and those other actions. I think taken individually, each one of those individual actions might be explained or justified. I was concerned about the impression created by the cumulative effect.

And I understand that people can disagree with those conclusions, and I respect people that do disagree with those—

Senator LEAHY. That is not the question. Do you think that perhaps some of us—and I am just a lawyer from a small town in Vermont. I do not have your experience or your background—so, accepting my lesser experience, it seems possible that somebody like myself might think that there is at least a hint of a double standard in your criticism of Democratic administration, but your acceptance of a Republican administration in appointing close friends, and brothers, and spouses, and so on.

Mr. OLSON. I can understand how you could come to that conclusion, and I am not quarreling with either your experience or the basis of your coming to that conclusion, but those were my opinions over with respect to a 7-year period. I came to those conclusions because I care very much about the Department of Justice. I believe that it matters a great deal to the American people. I believe in the standards of the Department of Justice, and I had that opinion, and I put it in writing, and I allowed it to be published.

I do understand that people could come to different conclusions. I do understand, taken individually, someone might say, well, you are applying a different standard to the previous Justice Department than you are to officeholders in your own party. I can understand someone making that argument.

I do, also, would like to say that I have said those things against the background of having spent 4 years in the Department of Justice, when—

Senator LEAHY. Let us go to that experience. Would you feel that it showed any kind of a political influence if, for example, let us take the Department of Justice, let us say a key position in the De-

partment of Justice, oh, I do not know, say, U.S. attorney, if a young son of a key Senator, say somebody in their twenties, was appointed U.S. attorney, and that Senator happened to be in line, for example, to the presidency under our Constitution, and was a close ally of the current President, would that give—aside from any questions of experience because I think all of these people you criticized were well-experienced—would that give any possibility, even a hint, that there might be anything political or partisanship in that kind of a selection?

Mr. OLSON. I can understand people raising those questions, in the same way that people raised those questions when President Kennedy appointed his brother to be Attorney General—

Senator LEAHY. But I am asking the specific—

Mr. OLSON. I understand, but I do not know the facts of that particular case, and I am saying that, taken cumulatively, those questions can be raised and asked, and I think it is quite legitimate to ask those questions, and that is why I am pleased to answer them. But I do think that what—

Senator LEAHY. Given those facts, just as I presented them, without going into any particular case or anything else, would that, on the face of it, raise any kind of questions that would bother you, as one who has been in the Department of Justice before and who has expressed very strong standards for avoiding the appearances of partisanship or cronyism or anything else, would that raise, just as I outlined the facts, without going into any particular person, would that raise any questions in your mind?

Mr. OLSON. Standing alone, not necessarily. What I think is important is to look at the cumulative effect and the cumulative number of appointments. There may be an individual that is related to another individual who is extremely well-qualified. And the people that you mentioned in my article, individually, may have been very well-qualified. I am not suggesting that individually they weren't nor that they individually did not do good jobs, but that—

Senator LEAHY. That did not come out in the article, unfortunately.

Mr. OLSON. I tried to say in the article that I was talking—that I set forth, at the beginning of the article, five or six different criteria by which I thought attorneys general in the past had been evaluated by the country, by political figures, and by newspaper editors. And so I took the various categories of standards by which a Justice Department could be evaluated, and then I took each one of those categories, and I tried to explain why I thought, in those categories, individually, there were issues that came up that cumulatively then, when applying all of those standards, created the impression or created the conclusion, in my mind, that I was trying to express.

Senator LEAHY. Now let us take a case that you would know as well as anyone, the *Bush v. Gore*, what is the significance of that case to the doctrine of equal protection of the law, in your mind?

Mr. OLSON. As I was explaining, in response to Senator Durbin's question, the—

Senator LEAHY. I had to miss because, as you know, the chairman, as is his right, called this hearing on probably the busiest day of the spring, so a number of Senators have had to miss the oppor-

tunity to be here with you today, and I know they regret that, and I am sure you do, but go ahead.

Mr. OLSON. The Supreme Court attempted to explain that it was concerned about the fact that there were different standards changing on a daily basis, sometimes on an hourly basis, in the recount process, that there were different standards from one county to the next county, that the rules that have been in place and that had existed prior to the election had been changed. And the Supreme Court, seven of the Justices felt that there were equal protection concerns with respect to that method of counting under those circumstances, but the Court tried to make it clear that it was deciding just that case.

Now I do believe, as some people have suggested, and Senator Durbin was suggesting, that that case may have a broader application, where there are different standards used in different precincts, different methods of voting machines, different types of ballots and that sort of thing. I do not know how far that case will go. I do think—

Senator LEAHY. Let me follow on that just a little bit. Let me follow on your much vaster experience in these areas than most of the rest of us have, certainly more than I have in the Supreme Court, and I do not mean that facetiously.

But let me ask you this: You are solicitor general. What kind, think ahead a little bit, what kind of equal protection propositions would you cite *Bush v. Gore* as authority? What type of equal protection would you use that for or would you? Can you think of a hypothetical?

Mr. OLSON. This was a very novel set of circumstances. The Supreme Court indicated that it was deciding a case that was peculiar to the facts of this particular case. I would have to look at the facts of another case. But as I say, among the factors that the Court was concerned about, is that the rules had changed, not once, but general rules, and time tables, and standards had been changed twice after the election. Palm Beach County, for example—and, in addition to that, in individual counties and canvassing—

Senator LEAHY. No, maybe I was not clear in my question. It is not so much on the facts. I mean, we can assume you are not going to have a case on all fours like this, and let us pray we do not for the sake of the country, and I mean that very seriously, and I think that is something everybody, Republicans and the Democrats should agree with, we hope we would not have another such case, but then most cases, virtually all cases, the Supreme Court, they are probably not going to be heard if they are on all fours with a previous Supreme Court case.

But I am just thinking of the doctrine itself, the equal protection proposition, can you see other types of cases where that could be brought in?

Mr. OLSON. There was a case in the Eleventh Circuit, where the standards, with respect to an affidavit, the kind of affidavit that could be used to count an absentee ballot was changed after the election. The Eleventh Circuit, in a case called *Roe*, R-o-e, had decided, and this was a few years ago, had decided that that violated the Equal Protection Clause and the Due Process Clause because

the rules had been changed after the election, and there were different standards being applied to absentee ballots that had been cast by in one set of circumstances and in another set of circumstances. That would be one example.

There was a United States Supreme Court decision in which prisoners were allowed to cast an absentee ballot if they were in prison in a county other than their residence, but if they were living, if they were imprisoned in the same county as their residence, then they could not cast an absentee ballot. The Supreme Court of the United States found unanimously, as I recall, that that violated the Equal Protection Clause.

Senator LEAHY. But do you see this being applied in cases, other than election cases?

Mr. OLSON. I have not thought about its application in other than election cases.

Senator LEAHY. I was toying with that idea earlier. I was having a hard time thinking of some other case, but I—

Mr. OLSON. I am sure the lawyers will come up with them, but I have not thought of them.

Senator LEAHY. Mr. Chairman, I went over my time, and I apologize.

Chairman HATCH. We will turn to Senator Feinstein.

Senator FEINSTEIN. Thanks very much.

Incidentally, Mr. Olson, I just reread that part of the article. You do not say that these people were otherwise qualified anywhere that I could find. They were just kind of hung out there and condemned because they might have been someone's relative or friend or something else. And you know, as they say around here, what is sauce for the goose, is sauce for the gander.

Mr. OLSON. I understand, and I recognize that I did not describe their qualifications. What I was saying, and I should have been more careful, I think I should have been more careful, but what I was—

Senator FEINSTEIN. That is an admission. We appreciate that.

Mr. OLSON. What I was saying is that the cumulative effect of selecting a substantial number of officials that have specific relationships in that pattern, plus these other factors, created an impression that I thought was unfortunate for the Department of Justice. Standing alone, I would say this now, and I probably should have said it much more clearly, standing alone, the appointment of someone who is well-known and someone who might—

Senator FEINSTEIN. You do not really need to explain. I mean, I understand what that piece was meant to do. I understand what it did. The thing we have to evaluate is your ability, in view of these feelings, to be objective and open-minded, and of course that is our job to do. But let me give you a little break.

Mr. Thompson, I said I was not going to ask you any questions, but let me just take a woman's prerogative and change my mind and ask you if you would look at something. A while back, in the, oh, mid-nineties, about six California sheriffs met with me to talk about young people that were getting materials off the Internet of how to make bombs, and were bringing these bombs to school, were blowing themselves up, et cetera.

And I sat down, and I looked at the bombings in this country and saw that they were going up. And then we downloaded from the Internet something called the Terrorist Handbook, which begins by saying, in effect "If you want to build a bomb that is bigger than this which devastated Oklahoma City or want to blow up the White House, this is for you." And it tells you how to break into a chemistry lab, what to steal, and then it has got diagrams of how to put together pipe bombs, letter bombs. Every use in that is illegal. There is not a single legal use in any of it.

Well, over three sessions, I think, I tried to pass a law making it a Federal violation, essentially, to publish bomb-making material, if you have the knowledge or intent that it is going to be used for a criminal act. And I worked with the Justice Department to draft this law, and I believe it will survive a court test.

My point is this: There have been no Federal prosecutions, under this law and in the meantime there have been at least 15 incidents reported that could have possibly been federally prosecuted. I would like to ask you to take a look at this and see if there are not cases worthy of prosecution under this law. This is becoming a huge problem in this country. It is so easy for young people and others to get this information. You know, just a few clicks, and you pull up the diagram telling you exactly how to do it, et cetera. So, if you would enforce this law, I would be very grateful.

Mr. THOMPSON. What you describe sounds horrible, and I will take a look at it.

Senator FEINSTEIN. Thank you. Thanks very much.

Mr. Olson, could I go back to a case that you represented, I know you will remember, the Virginia Military Institute, and it is a case in which you represented the school, and the school did not want to admit women, and the Court ruled 7 to 1 against you. I will not read some of the testimony that the school entered into evidence, like, "Women basically do not have the same threshold on emotion as men do. They break down emotionally. There are fields in which women so often flounder," et cetera, et cetera, et cetera.

But after the Supreme Court decided the case 7 to 1, you said that Justice Scalia's lone dissent in the case was, and I quote, "one of the most elegant and moving opinions I have ever read," and you stated that, "I would have to agree with Justice Scalia that the majority's opinion seems to be incorporating society's current preferences into the Constitution, and that is a very perilous course."

Do you consider equal rights for women merely one of society's current preferences?

Mr. OLSON. No, I do not. I think that I said that in the context of the—we were representing, on appeal, in the Supreme Court, the Commonwealth of Virginia with respect to that program. Virginia had determined that single-sex education was advantageous for some young people and had this program that had, in the past, been very successful for young men. It had determined, as a result of a previous appellate court decision, that that program could only be sustained constitutionally under the Equal Protection Clause if it also afforded an opportunity for young women to have a comparable type adversative education in the Virginia system.

Virginia felt that, while most of its higher educational budget, something like 97 or 98 percent, went into co-educational opportu-

nities, that single-sex education, since it had had some benefits for some young people, should be available in Virginia to both sexes and that it should not just be available in the private sector, that the public sector, for people who could not afford to go to private school, ought to be given those opportunities, and that was the basis on which we presented the issues to the United States Supreme Court.

Senator FEINSTEIN. I am not sure I understand. Are you making the case that if Virginia had a female Virginia Military Institute that an all-male Virginia Military Institute would not have been a problem? I am not following what you are trying to say.

Mr. OLSON. The Fourth Circuit had said, the first time the case had proceeded through the appellate system, that Virginia could have a single-sex male institution, provided that Virginia also provided a single-sex educational opportunity for young women that was modeled on a comparable standard. That is what the United States Court of Appeals for the Fourth Circuit had said.

Thereafter, and I was not involved in the case on behalf of the State of Virginia at that time, thereafter, Virginia set that system up. The Fourth Circuit approved that system, and that is the system, the system where there were comparable educational opportunities on a single-sex basis in Virginia, along with its broad co-educational program, that is the issue that went to the Supreme Court on that basis. Now that was rejected, as you say, 7 to 1 by the United States Supreme Court.

Senator FEINSTEIN. Attorney General Ashcroft stated during his confirmation hearing that *Casey* and *Roe* were the settled law of the land and that he would follow the law in this area. He also said, and I quote, "I do not think it could be my agenda to seek an opportunity to overturn *Roe*." Do you agree with that, and will you similarly follow those decisions in the abortion rights area?

Mr. OLSON. Yes.

Senator FEINSTEIN. Now, I want to ask you about another court case that you took, and that was the case in Washington on strict liability for makers of assault weapons. I am trying to find it here.

You answered Senator Sessions, I thought, very directly. I think you said that if you are confirmed as solicitor general, you would defend Federal gun laws, such as the ban on assault weapons, the Brady law, et cetera; is that correct?

Mr. OLSON. I do not think that Senator Sessions asked me those questions, but I do believe that the laws passed by the United States are entitled to a defense by the United States Department of Justice, and unless they are clearly unconstitutional or in some way invade the prerogatives of the executive branch, the Justice Department has a responsibility to defend those statutes in court, and I do agree that it would be the Justice Department's responsibility to do that.

Senator FEINSTEIN. So you would.

Mr. OLSON. Yes.

Senator FEINSTEIN. Let me ask you about this case where you represented several Republican Congressmen who challenged a law imposing strict liability for damages in the District on makers of assault weapons and other high-firepower guns. I gather what happened was the Federal District Court stated that the issue that you

raised had been resolved unfavorably to you by the D.C. Court of Appeals, it actually called your argument disingenuous, and the D.C. Circuit affirmed that. As I understand it, under D.C.'s Assault Manufacturing Strict Liability Act of 1990, makers of assault weapons and other high-firepower guns are held strictly liable for damages when those guns are used to injure or kill innocent people in the district.

And you brought a case, on behalf of several Republican Congressmen, rather than challenging that law in Congress. You represented a small group of people trying to strike down that street liability law. I am curious about why you took that course. It was obviously not a successful course.

Mr. OLSON. I have very, very limited memory of that case. It was handled by lawyers in my office. My name was on it, and I am not disclaiming responsibility for it, but I did not do the bulk of the work. It was a number of years ago. We were approached by Congressman Bliley, with respect to the interplay of the authority of the District of Columbia legislature and Congressional authority, with respect to review of actions by the District of Columbia.

Congressman Bliley felt that there was a Congressional prerogative, with respect to the statutes that existed at the time, with respect to the responsibility of the District of Columbia in circumstances that were involved in that case. It was a legal issue. And as I recall, you are correct, that we were not successful in that case, but we did represent Congressman Bliley, and I guess a couple other Members of Congress, but I cannot, and I do not remember enough of the specifics to be any more helpful with respect to the precise legal arguments. We would not have made those legal arguments unless we felt that they were legitimate legal arguments that had a good-faith basis for having brought them, but I do not recall any more of the details.

Senator FEINSTEIN. Thank you.

Thanks, Mr. Chairman. Thank you very much, gentlemen.

Chairman HATCH. Thank you, Senator Feinstein.

We are going to turn now to Senator Kennedy.

Senator KENNEDY. Thank you.

Thank you, and I apologize to the witnesses for not being here during the course of your testimony. As you have figured, we all have a number of different responsibilities at this time.

I want to congratulate both of you on your nominations. I wish you well. I'd like to get back to Mr. Olson, and Senator Feinstein's question about the VMI decision. I understand that during the presentation on your side, the Virginia experts used the words, as Senator Feinstein has pointed out, "Women basically do not have the same threshold on emotion as men do. They break down emotionally. And there are fields in which women so often flounder; spatial things, geometric things, math and physics, and leadership itself."

What was your reaction when you saw that kind of language?

Mr. OLSON. Oh, I was not very happy with it.

Senator KENNEDY. Did you ever say anything about it?

Mr. OLSON. Well, I was brought in to handle the case in the Supreme Court. That was the trial court record, and I think that, without dissecting the whole record, I think—

Senator KENNEDY. I am not asking about the whole record, I am asking about these sections here.

Mr. OLSON. There were things that, as an appellate lawyer, I did not agree with, and I did not—I wish they had not been in the record, but they were in the record. They were the experts that were used in connection with the trial of that case.

Senator KENNEDY. But did you find those offensive? Did you ever register any of that? Did you ever say, “Look, I am glad to take on this question about whether there can be single-sex classes, and whether they are constitutional, but I am not going to be a part of a case that has that kind of stereotyping of women”?

Mr. OLSON. I thought that there were issues in the case involving single-sex education that the Commonwealth of Virginia had some legal issues that they were entitled to present to the United States Supreme Court, and I felt comfortable handling that case. As I said, we did lose the case in the United States Supreme Court, and the Supreme Court really was not very closely divided on the case. But I do feel that, from a legal standpoint, we presented a legitimate argument.

Senator KENNEDY. As I understand, there is a different constitutional standard when you have excluded a group, such as women, as VMI did, in meeting constitutional muster versus establishing classes to meet the constitutional standards which are established for single-sex.

Mr. OLSON. Courts had, in the past, and it is still a little bit confusing with respect to the differential between strict scrutiny and what the Court called an intermediate scrutiny. This was a case involving two separate institutions in Virginia, one which excluded women, and one which excluded men, to provide citizens in Virginia with an option of single-sex education.

Senator KENNEDY. Well, yes, I understand that, but as I understand the Supreme Court’s ruling on excluding women as a gender and as a class, there are past Supreme Court holdings on this that are pretty clear. I want to sort of move on from this, but that is my understanding.

On the questions about the recent Supreme Court decisions, Framers of the Constitution struggled, obviously, with the competing Federalist/anti-Federalist philosophies, as a result of the great debate on our democracy and Constitution which, in changing ways over the years, balanced the relationship of the Federal Government and the States.

Now, the debate is before us again today. In recent years, the Supreme Court, in a series of 5–4 decisions, has struck down all or parts of Federal statutes on federalism grounds. Many constitutional scholars believe the Court’s recent decisions are a dramatic departure from the settled precedent and an accurate reading of the 11th and 14th Amendments.

As a legislator, I am concerned about the effects that the Court’s recent decision will have on Congress’ ability to pass laws that eradicate discrimination and bias. For example, an extensive record was compiled in support for the Americans With Disabilities Act. The record included 13 hearings, 63 public forums across the country attended by over 30,000 people, and thousands of letters documenting discrimination. And when the *Garrett* case was argued be-

fore the Court, 14 States filed a brief supporting the ADA. The States supported the ADA action in terms of the coverage of State employees.

A similar record was compiled in support for the Violence Against Women Act. Over 30 States supported it when the *Morrison* case was argued before the Supreme Court. Yet the Court found portions of both statutes unconstitutional.

And let me just add to that, in the ADA, there had been six Circuit Court decisions supporting coverage of the ADA to State employees and employers, and the States were also supportive, as was the President of the United States, former President Bush.

We have another, and I am just wondering about your reaction to this. We have seen on the questions of Violence Against Women, we have seen in certain issues on pay, overtime, we have seen on the Older Americans Act, we have seen on the Disability Act—I know I heard you talk about Family Medical Leave in an earlier response, and that you support our position. You have other kinds of employment statutes on this.

We spent a lot of time, and many of us were on the committees of jurisdiction, spending a lot of time working out a legislative process to address these particular needs. And what we are seeing now is this Court, in 5–4 decisions, routinely knocking down these laws. I just want to get your reaction to those precedents and I'd like to know whether we are going to have a friend in your office or not.

Mr. OLSON. The only direct experience I have had with the 11th Amendment was a case I argued last year on behalf of a citizen from Vermont, who brought a qui tam case. It was called *Stevens*, was the name of the individual, brought a qui tam case against the State of Vermont, and I was arguing that the Federal qui tam statute did apply under those circumstances. The Supreme Court did not reach the 11th Amendment issue in that case.

I believe, as I said before, that if there is any reasonable way that a good-faith defense can be made with respect to a statute that is enacted by this Congress, under the Commerce Clause or Section 5 of the 14th Amendment—

Senator KENNEDY. Well, the Spending Clause is the one big clause.

Mr. OLSON. The Spending Clause, yes.

Senator KENNEDY. I would like to submit some questions on that specifically, because we are trying to look at that. The Federal Government can sue. But, as a practical matter, given the range of different responsibilities and priorities, that is not an effective remedy. The EEOC is so far behind. You can get an injunction, but without monetary damages out there, how effective is this?

The Supreme Court does not appear to be leaving us remedies in this area, and this is a whole new departure. We had an interesting hearing in our Human Resource Committee yesterday on the subject. John Marshall said very clearly, understanding the 11th Amendment that, he saw no impediment, in terms of the application of these statutes to the States and State employees. And we have seen a significant change in the interpretation of it.

I do not know whether you have looked through any of those cases or thought at all about that particular kind of issue because it relates very importantly to the division of powers between the

Congress and the courts and is very important, I think, certainly to us.

Mr. OLSON. I agree with you. I think the 11th Amendment line of cases is—I would not have anticipated it. I would not have anticipated the way it played out particularly in the *Alden v. Maine* case, where it applied to cases brought not just in the Federal District Courts.

I do think that there is undoubtedly more latitude that will be given to Congress under the Spending Clause, and I do agree with, I think the import of your question that the solicitor general and the Department of Justice, not just the solicitor general, but the Department of Justice has to be Congress's partner in trying to find solutions to what you decide laws should cover that are constitutional and will be upheld in court.

And I think we have a very, very grave responsibility to find ways to defend laws that this Congress passes.

Senator KENNEDY. Thank you for your response.

Let me move on to the issue of diversity. What I would like to know is, if it is appropriate for the President to consider race and gender in putting together his Cabinet, why is it not appropriate for other employers and public universities to do the same?

President Bush's director of Presidential Personnel recently admitted that the White House considers race, ethnicity, and gender in making Cabinet and executive branch appointments. He also stated, "The President is very committed to diversity of thought, professional background, of geography, ethnicity, and gender. If everyone comes from the same background, same part of the country, looks the same, acts the same, it is not going to be as strong a Cabinet as if you have diversity of background, however you define that of geography, ethnicity and gender."

What is your reaction to the director's statement, which, as I would understand it, must be the President's position as well?

Mr. OLSON. I assume so, too.

With respect to the legal question implicit in that, the courts have held that when Presidents are making appointments to assist the President in connection with the discharge of his responsibilities, I think that the courts have not applied the Due Process Clause or the Equal Protection Clause, but I understand what you are saying.

Senator KENNEDY. Well, I know you understand what I am saying.

Chairman HATCH. He may be the only one.

Senator KENNEDY. You understand, Orrin.

[Laughter.]

Senator KENNEDY. We have seen different lower court decisions on these issues, on affirmative action, and I am trying to understand which cases you would take. We see different measures bubbling up in various circuits at the present time and I am trying to get some sense about your own views of this in terms of your activity in this area before the Supreme Court.

Mr. OLSON. I can't tell you, of course, which cases would be the best cases to take, and that will, of course, depend upon whether there are Federal statutes involved or whether it involves a State

statute and the question of whether the United States should file an amicus brief.

The Supreme Court has said with respect to the decisions that are predicated on race as a factor in Government programs that strict scrutiny applies, and any case that the Government takes to the Supreme Court with respect to that—I assume the person who makes that decision is going to want to win that case, and therefore to find the cases that have the best factual bases that will supply the Supreme Court with the factual predicate to decide that the strict scrutiny, compelling governmental interest, narrowly tailored remedy will be successfully applied.

Senator KENNEDY. Is diversity an appropriate goal for a university?

Mr. OLSON. Well, the Supreme Court has said that strict scrutiny, compelling governmental interest, and so on, standard applies. What the Court said, or what Justice Powell said in the *Bakke* case has to be taken into consideration, along with the *Adarand* case and the *Croson* case which have come along secondarily.

I agree that it is an extremely important question that in colleges and universities and workplaces and everywhere else, all of our citizens have access to those opportunities and every opportunity to participate in them. And we as a culture need to do everything we possibly can under the Constitution to make sure that all of those opportunities are available to all people.

Senator KENNEDY. Mr. Olson, I know there was one earlier question—maybe there were others—that was communicated to me on reproductive rights, and I would like to ask you a question.

There are those who believe that *Roe* was a sound constitutional decision and others who believe it should be overturned at the first opportunity. For example, during the Reagan Administration, the Acting Solicitor General, Charles Fried, argued that “The textual, historical, and doctrinal basis of *Roe v. Wade* is so far flawed that this Court should overrule it and return the law to the condition in which it was before it was decided.”

During the Bush administration, William Bryson argued that “The United States continues to believe that *Roe v. Wade* unduly restricts the proper sphere of legislative authority in this area and should be overruled by this Court.” Similarly, during the Bush Administration, Solicitor General Ken Starr argued, “The United States continues to believe that *Roe* was wrongly decided and should be overruled.”

So if you are confirmed, will you urge the Supreme Court to overturn *Roe v. Wade*?

Mr. OLSON. No. I accept what now Attorney General Ashcroft said. And those arguments were made at a time quite some time ago before the Supreme Court made it abundantly clear that *Roe v. Wade*, whatever one might think about the legal analysis that is in it, is the law of the land. It reconfirmed that in the *Planned Parenthood v. Casey* case and last term in the *Stenberg* case.

And Attorney General Ashcroft said that he accepted those as settled law. He thought it would be counterproductive, whatever one might have thought about them, to bring that back to the Su-

preme Court. The Supreme Court is not interested in changing those decisions.

Senator KENNEDY. Even if the composition of the Court changes?

Mr. OLSON. The Supreme Court is the one that can decide whether something is settled, and there may be other circumstances out there in the future that I can't begin to contemplate.

The other thing that the Supreme Court did last year in a case involving the *Miranda* decision, in a decision by Chief Rehnquist, said that stare decisis is extremely important to the Supreme Court, especially absent special circumstances in constitutional cases. And I think that even if there are changes in the composition of the Court, whatever changes there are in the composition of the Court, are going to respect the doctrine of stare decisis.

Senator KENNEDY. Mr. Chairman, I have maybe two final questions, quick questions.

Chairman HATCH. Why don't we give you that time, but could I interrupt for a second?

Senator KENNEDY. OK.

Chairman HATCH. Does anybody on this side have any further questions of Mr. Thompson?

Senator KENNEDY. Well, I have one.

Chairman HATCH. Well, other than your one, how about your side?

Senator LEAHY. Most of it I can submit for the record, but I do have a couple questions, one involving the Hatch bill which I strongly support and I wanted to make sure that—

Chairman HATCH. At last, a common agreement, is all I can say. That is great.

What we will do, then, is let Senator Kennedy finish his questions, then Senator Leahy can ask whatever he wants of you, Mr. Thompson, and we will let you go. And then I presume Senator Leahy will be the last to ask further questions of Mr. Olson.

Senator KYL. Excuse me, Mr. Chairman. I don't think I will have another question. I have one request to make, but I have no objection to going ahead and—

Chairman HATCH. Is this procedure all right with my colleagues?

Senator KYL. Yes, and as of right now I don't have another question, just a quick comment.

Chairman HATCH. All right, that will be fine. I think we can get this wrapped up and then have time to issue written questions.

Senator LEAHY. We will have to check on this side to see. We are checking right now.

Chairman HATCH. All right. If you will do that, I would appreciate it, but I would like to let Mr. Thompson go.

Senator LEAHY. Mr. Thompson can, sure.

Senator KENNEDY. Just finally, Mr. Olson, in 1991, in your piece in the Journal of Legal Commentary on the Thomas hearings, you had a series of suggestions. One suggestion was that "the ABA and all the other self-serving interest groups should be deleted from the process." Approximately 2 weeks ago, President Bush implemented this change.

What I would like to know is whether anyone in the Bush administration consulted you in a formal or informal way before they decided to remove the ABA.

Mr. OLSON. No.

Senator KENNEDY. You obviously don't consider the Federalist Society to be a self-serving interest group.

Mr. OLSON. I don't. The Federalist Society does not lobby; it does not pass resolutions, it does not file litigation, it does not file amicus briefs. What it does is sponsor programs which—yes, members of the Federalist Society have points of view, but opposing points of view are also expressed.

All four of President Clinton's counsels have been participants in Federalist Society programs. People for the American Way have been represented in those programs. The ACLU has been represented in those programs. One of the things the Federalist Society does is try to bring people together that have strong views and put them out for public evaluation.

Senator KENNEDY. Mr. Thompson, I thank you and congratulate you.

Mr. THOMPSON. Thank you.

Senator KENNEDY. In an article you wrote dealing with black-on-black crime, you argued that "Conservatives have led the way in implementing tough new Federal law enforcement measures. Under the Federal system of Government, the primary task of fighting crime falls upon State and local governments. Nevertheless, it is important that the Federal Government do its share and take a leading role in the fight against crime."

As you know, there have been significant bipartisan majorities of both Houses of Congress supporting passage of comprehensive Federal hate crimes legislation. Last week, we introduced legislation in the Senate with 51 cosponsors. Last year, we passed it with a very substantial vote.

Consistent with your view that it is important that the Federal Government do its share and take a leading role in the fight against crime, will you commit to working with us to pass this important legislation this year?

Mr. THOMPSON. I will commit to working with you, Senator.

Senator KENNEDY. That is as far as we can get?

Mr. THOMPSON. No, but I do want to just give you something about my background.

Senator KENNEDY. Please.

Mr. THOMPSON. As United States Attorney, we brought the first criminal prosecution for members of the Ku Klux Klan who were terrorizing some of our citizens for simply who they were associating with. Obviously, we find that kind of violent crime, especially violent crime that is motivated by racism, by sexism, or any other kind of bias, abhorrent and we want to do whatever we can against it. And I am certainly willing to work with you to see what is the proper role for the Federal Government to assist the States in prosecuting these kinds of crimes.

Senator KENNEDY. Well, I appreciate that response and that is very constructive. I wouldn't have expected otherwise, but it is very reassuring. We have seen an overall gradual reduction in terms of crimes of violence, but not in the area of hate crimes. They have

been going up, particularly with certain groups. We have tried to work out a rather limited role actually for the Federal Government and their involvement.

We have refined and narrowed it considerably over the period of the last years, and responded to some of the questions about special rights. But we are very serious about carrying this legislation forward. We would like to do it with the support of the President. He will rely, I would imagine, on the Justice Department for advice, and your judgment will be very important, so we will look forward to working with you.

Also, I would like to mention the area of immigration. We, as you know, recently had visitors from Mexico. The President has talked about looking for new opportunities to work on issues involving Mexico, on which there are a lot of differing views.

As members of the Immigration Subcommittee, Senator Brownback and I met with the Mexican foreign minister yesterday and the Minister of Interior. And I understand that Attorney General Ashcroft and Secretary Powell met with them for two-and-a-half hours yesterday. So it is a matter of importance, and getting your involvement in that will be something we will look forward to as well.

Mr. Chairman, I want to congratulate both of the nominees. I look forward to voting in support of both of them.

Chairman HATCH. Well, thank you very much, Senator.

Senator KENNEDY. I thank the Committee for its kindness in working out the questioning period.

Chairman HATCH. Well, thank you for your kindness. It is such a wonderful thing to me and I appreciate it very, very much.

I guess Senator Leahy, unless we hear from some other Senator, will be our last questioner.

Senator LEAHY. Mr. Thompson, I am sorry again that we have kept you here so long with this unique and unprecedented way of having the Deputy Attorney General and the Solicitor at the same time. This has made it a little bit longer.

There is an excellent piece of legislation, and I would ask you to look at it, the Drug Abuse Education, Prevention, and Treatment Act, otherwise known as the Hatch-Leahy Act, or in Vermont the Leahy-Hatch Act.

Chairman HATCH. I am willing to call it the Leahy-Hatch Act.

Senator LEAHY. No, no, it is Hatch-Leahy.

We discuss both treatment and prevention programs and law enforcement in it. It will be a difficult time to fully carry out this bill if some of the cuts that the administration is looking at, some of the cuts in crime-fighting money that they are looking at go through. We will have a difficult time doing this whole Act.

I am not going to ask you to go into those parts where the administration is cutting money for law enforcement, but I would ask you to take a look at the bill and let both Senator Hatch and I know if you support the bill.

The other thing I would ask you to look at—

Chairman HATCH. Well, let me just interrupt.

We expect you to support the bill.

[Laughter.]

Mr. THOMPSON. I understand.

Chairman HATCH. I haven't asked any questions, so I haven't asked for very much, but that is one thing we are going to ask.

Senator LEAHY. You see, Mr. Chairman, I am so shy and retiring, I couldn't come right out and say that. I leave it to you brash Westerners.

Chairman HATCH. That is right.

Senator LEAHY. We New England understating types—

Chairman HATCH. Well, you are more sophisticated than we are.

Senator LEAHY. We are just quiet.

Chairman HATCH. But we also would like the money pushed for it, too, because it is a revolutionary bill that could make a real difference.

Senator LEAHY. The message in that, Mr. Thompson, is you have got something where both Senator Hatch and I are holding hands. Either one of us doesn't understand it or it is a darn good bill.

Mr. THOMPSON. I understand.

Senator LEAHY. In this case, we both understand it very well, so it is a darn good bill.

Now, in this bill—and here is something that you are going to have to look at very closely and I think there will be a debate on this—it does not include any mandatory minimum sentences for drug crimes. Now, that is a feature that is quite unusual for a drug bill, and I suspect we are going to be having hearings. We may be having hearings jointly, or I will be holding them or Senator Hatch will be holding them.

And this is not a Democrat or Republican thing. There are a lot of Senators who go across the political spectrum—conservatives, liberals, moderates—who are increasingly criticizing mandatory minimum sentencing schemes. They all look great to begin with and I suspect I voted for some. And I am a former prosecutor, but speaking just for myself I have some real problems with some of these. I know judges have some real problems.

We all get frustrated when we see the occasional time when a judge is too lenient on a crime that calls for it, but the arbitrariness of this, among other things, has led to a country where we have more people behind bars than any other country in the world. We have an extremely high percentage of young African-American males behind bars. We have the disparity between crack and powder cocaine.

All of these things are frightening me. They are frightening me as a parent, as a grandparent, to see what kind of a country it is bringing up. It is not that there is anybody up here who is not against crime. I mean, we can all accept that we are all against crime, but I think sometimes to prove it we have gone overboard.

We see prison overcrowding, with all the problems that come out of that, I mean all the problems, and they are enormous ones. We see low-level drug offenders serving sometimes what seem to be draconian sentences. So I would ask you to look at mandatory minimums. I am not going to ask the question now. If you want to say anything about it, it would be useful and appropriate, but I would also like you to think about that.

You are going to be confirmed. There is no question about that, but I would hope that you would—you don't have to answer that part, but I would hope you would look at this issue of mandatory

minimums. I think there should be a debate on this. I have talked to Senator Ashcroft about it. I have not talked to the President, but I will. We should all look at that.

Mr. THOMPSON. We will look at that, Senator. I will make a comment on whatever we can do and whatever this body can do to—and I wrote an article about this after I left the U.S. Attorney's office—whatever we can do to not only attack the drug problem on the supply side, and we shouldn't reduce our efforts on that—

Chairman HATCH. That is right.

Mr. THOMPSON.—but we have got to do something to attack it on the demand side if we are ever going to try to get this problem resolved in this country.

When I became U.S. Attorney in Atlanta at the same time Senator Sessions was U.S. Attorney in Mobile, we had two prosecutors that were dedicated to drug prosecutions. We have many more now in the Northern District of Georgia, but we still have the same kind of serious problem with respect to drug smuggling, drug trafficking, drug use, and we have got to get a hold of this problem.

We have been able to successfully attack other kinds of problems, for example, with drunk driving. We have been able to do that and make it socially taboo, and we have really got to try to do that with respect to the drug problem, work on the demand side. I don't have all the answers, but I promise you that—

Senator LEAHY. No one does, but understand my concern. Are these mandatory minimums creating just the opposite of what we wanted to create? Are we putting people in jail for a long, long time and then sending them back out into society where they are not going to be good members of society?

Mr. THOMPSON. No. I understand what you are saying.

Senator LEAHY. You understand. We discussed this earlier, too.

Chairman HATCH. Would my friend yield for just a comment or two?

Senator LEAHY. Sure.

Chairman HATCH. I am really appreciative that Senator Leahy has brought this up. This is a bill that is near and dear to both of our hearts and it is long overdue. We are looking for alternatives to imprisonment especially for those first-time offenders and those who are young people who have made tremendously bad choices in their lives. We want to keep the supply side, law enforcement end up, but we do want the education, prevention, and treatment side beefed up.

Frankly, this is a chance for us to work together on something that will be a joint initiative and would really make a difference in our society. So Senator Leahy and I are going to really push hard on this, and we have got to have the money there as well.

In addition, if I could, Senator—I don't mean to keep interrupting you, but I would like to get this across since he has brought that up. The President said in his address to the joint session of Congress that he wants to help children of prisoners. Well, I do too, because we find a high percentage of those kids turning to crime themselves because they don't know what to do; nobody is there to help them.

I have a number of programs that I think—I want you to look for ways of finding money for programs that will help children of

prisoners. We will make a difference and bring down crime even more if we can give those kids a chance, especially in this digital age. I intend to do that. As a matter of fact, we are hosting a dinner on May 8th and I expect both of you and your wives to be there, OK?

Mr. THOMPSON. OK.

Chairman HATCH. OK, that will be great.

Senator LEAHY. Call the scheduler and tell them where I am.

Chairman HATCH. I expect you to be there, too.

Do you have any more questions?

Senator LEAHY. Well, the McDade law is another one. You know, that was slipped into the omnibus appropriations bill back in the 105th Congress. You have written an article about it. You say the McDade law should not be amended to permit the Department of Justice to unilaterally trump State bar rules. I happen to agree with that.

I also feel, though, that the McDade law went further than anybody ever intended. You mention in your article the situation in Oregon where Federal prosecutors can no longer use federally authorized investigative techniques like wiretaps or consensual monitoring because of a recent attorney ethics rule of the Oregon State Supreme Court.

We have cases where now U.S. Attorneys cannot do the kind of oversight in certain States, or are afraid to do the oversight of the FBI agents that they are supposed to be overseeing, or DEA or anything else, because they are afraid especially if they are doing a multi-state investigation that somehow they may be in violation of a particular State ethics law.

Now, I introduced a bill last year which would do a clear choice of law rule under which Federal prosecutors would be subject to the ethics rules of the Federal courts in which they practice. I see it as sort of a compromise between the situation we now have under the McDade law and what I think many intended to do with it.

Will you look at that, please, and see if there is advice you can give Senator Hatch, myself, and others, because I think that we have a lot of districts where cases are not being properly investigated or prosecuted. Take a look at the Alaska Air case, without going through the facts of that here, but ask somebody to tell you about that and just ask whether, without this, we might have saved some lives.

Mr. THOMPSON. I have heard about that incident, Senator. I don't want to be flippant, but I have heard about my article on McDade from a number of my friends in the Department of Justice, and wouldn't it be great if I had had the foresight to think about whether I would have been here today when I started writing that.

But as you recall from my article, I did say that I did not oppose any kind of provision that would resolve perhaps the conflict that would prevent Federal prosecutors and agents from doing their important work. I did reserve that in the article, and I am going to work with the career people in the Department and they are going to inform me of some of the clear examples that they have had where they believe McDade has impeded their efforts.

I will say this as someone who will be hopefully advising the Department's representatives with respect to McDade. Whatever we do with respect to that legislation, we need to be able to send a good and clear message to the public and to the judges that somehow all lawyers are going to be treated fairly. I think that is in the interests of the Department as it proceeds with litigation.

Senator LEAHY. I agree, and I think lawyers must be held to high ethical standards. I am not suggesting that a Justice Department lawyer could come into a State and just run rough-shod, but I think we can have very specific Federal rules for the Federal attorneys.

I just don't want a situation where the U.S. Attorney decides, well, the only way I can cover myself on this is not to do any of the oversight of what is going on. Senator Sessions was a U.S. Attorney, and I think anybody who has been a prosecutor at the State or Federal level knows that you are not out there taking the fingerprints and all, but you sure as heck want to know what the investigators are doing. If they are going to be doing searches or they are going to be doing wiretaps or something like that, you want to have some involvement in it because sooner or later you are going to have to try that darn case.

Mr. THOMPSON. Let me make it clear. I don't want to have any law on the books that is going to prevent Federal prosecutors from aggressively enforcing the law.

Senator LEAHY. Thank you. I have no further questions of Mr. Thompson.

Chairman HATCH. Mr. Thompson, I think we can excuse you, unless you would like to stay.

[Laughter.]

Mr. THOMPSON. Thank you.

Senator LEAHY. Your cousin has already left; I noticed he was here earlier. I must admit you should mention to him, you know, all of us here in the Congress think what a superb job he does at the Library of Congress. If there is one piece of our Government—there are many, perhaps, but if there is one that really stands out as a national, international, world treasure, it is the Library of Congress, and your cousin is one of the reasons for that.

Mr. THOMPSON. I am glad at least one member of the family came out well.

Chairman HATCH. Let me just say before you leave that we will keep the record open. Assuming that we can get the transcript by tomorrow or Saturday, we will keep the record open until next Wednesday for written questions to both of you. Hopefully, when you get those questions, you will get the answers right back in so that over this recess period we will be able to go through them all and hopefully resolve any questions that people have. In fact, I expect to resolve them.

If you will jump right on that, we would be very appreciative.

Mr. THOMPSON. Yes, sir.

Chairman HATCH. We want to thank you and your family. You have got a great family and your wife is a great human being. We are grateful to have you here and we will release you at this time so you can get about your other duties, OK?

Mr. THOMPSON. Thank you.

Chairman HATCH. Well, then Senator Leahy will be our last questioner.

Senator LEAHY. I think Senator Kyl—

Senator KYL. Since I anticipated we might be done by now, let me just make a request for the record. At 4:15 I will have to leave, if that is all right. What I would like to ask is leave to introduce into the record a correction of the record or clarification with respect to the requests from the last two administrations to U.S. Attorneys to vacate their positions.

I believe that at the beginning of the Clinton administration, there was a general request that all U.S. Attorneys submit their resignations.

Chairman HATCH. Within 10 days.

Senator KYL. Yes, and I don't believe that was done in this administration. I know in the case of the U.S. Attorney in Arizona, for example, there was no such request. There have been some, but I think there was an implication that the two situations were similar and I would simply like to submit for the record the exact facts so that people can judge that for themselves.

Senator SESSIONS. I would just follow up that I believe Vice President Cheney made it clear that they were not going to do that because they did not like the implication that a mass firing with no notice gave to the rule of law. So they have adopted a different policy that is quite preferable. When I was U.S. Attorney, I was technically fired by President Clinton within 10 days of his taking office. As I recall, however, he let me stay around a little longer.

Senator LEAHY. I was going to say you didn't leave in 10 days by any means.

Senator SESSIONS. It all worked out, but I think there has been more sensitivity to that by this administration, which I think is good and is consistent with my suggestion to them.

Senator LEAHY. Why don't we let CRS just give us a definitive response on that?

Senator KYL. Mr. Chairman, might I just before I leave again say that I think both of these nominees are extraordinarily well qualified. These are the two most important positions in the Department of Justice, other than the Attorney General. They both represent all of the people of the country, and I just have no doubt that both candidates will acquit themselves very, very well. And I look forward to their speedy confirmation. We need their help.

Chairman HATCH. Right. I want to thank my colleagues for spending all day with us here today. This has been a lengthy hearing and I want to thank you for being with us.

Senator, we will turn to you for final questions.

Senator LEAHY. I want to let the grandchildren know that they are going to get their grandfather back in just a few minutes. Seeing the three of you there has made me miss my grandson more every minute looking at you.

Chairman HATCH. You three have been just wonderful, I will tell you. Your parents have not been as good as you have.

[Laughter.]

Senator LEAHY. Mr. Olson, you represented David Hale. This is no surprise to you; these are some questions I asked you when we

met. He was the sole witness to make specific allegations against President Clinton in the investigation of the Whitewater matter.

How did you come about representing him and were you paid for that?

Mr. OLSON. Two of his then lawyers contacted me and asked—at the time, Mr. Hale was a citizen of Arkansas and he was a witness down in the proceedings, in the Whitewater proceedings that were being conducted by the independent counsel in Arkansas.

At the same time, Senator D'Amato's Committee was conducting an investigation of Whitewater. I can't recall the exact name that that investigation took, but it was Whitewater investigations here in Washington, D.C. That Committee gave an indication that it intended to subpoena Mr. Hale to testify before that Committee here in Washington, D.C.

One of his lawyers contacted me—I can't recall the man's name—and asked whether I would be available to represent Mr. Hale in connection with that subpoena here in Washington, D.C. They felt that they needed Washington counsel with some experience dealing with a Congressional investigation. I did agree to do that. Mr. Hale and I met together. He agreed to pay our fees. I knew that there was some possibility that he wouldn't be able to pay.

Senator LEAHY. Now, who agreed to pay the fees? Mr. Hale did?

Mr. OLSON. Mr. Hale did. I knew there was some possibility that he might not be able to pay the fees, but I did agree to represent him. He was subpoenaed by that committee. He and I spent considerable time together going over the facts as he knew them. He determined that it was not in his best interest and to claim his rights under the Constitution not to testify before Senator D'Amato's committee.

There was a great deal of pressure on him and his counsel to have him testify. It was not in his interest to do so. He claimed his constitutional right not to testify and he did not testify. That ended my relationship with him. As it turned out, he was not able to pay his legal fees. I was never paid for that representation by anybody. I would love to be paid by anybody who would like to volunteer to do that, but—

Senator LEAHY. The reason I asked the question—as you know, I asked you this question once before because there has been so much going around and this is the same answer you gave me earlier and I wanted you to have a chance to—

Mr. OLSON. Senator Leahy, I very much appreciate your asking me the question so I could explain that.

Senator LEAHY. Now, there were accusations later on that Richard Mellon Scaife funneled money through the American Spectator and its Arkansas Project to pay Mr. Hale, actually to pay him to offer false testimony against President Clinton. There were, I am told, eyewitnesses who testified at the grand jury who said Mr. Hale received payments from a Mr. Dozier, who in return received money from a lawyer connected to the Spectator.

I would not ask you to in any way violate the attorney-client relationship, but are you aware of any of that?

Mr. OLSON. I was aware of those accusations. I am not aware of any payment to Mr. Hale for any purpose, and I will say that the independent counsel engaged, with the approval, I think, of the De-

partment of Justice, an individual by the name of Shaheen, who had been the head of the Office of Professional Responsibility in the Department of Justice, to investigate those allegations. An investigation was conducted. I was a witness in that investigation.

There was a report filed. I think it is still under seal. I have never seen the report, but that is all I know about it. I am not aware of any money that came from Mr. Scaife or anyone else to Mr. Hale.

Senator LEAHY. Were you involved in the so-called Arkansas Project at any time?

Mr. OLSON. As a member of the board of directors of the American Spectator, I became aware of that. It has been alleged that I was somehow involved in that so-called project. I was not involved in the project in its origin or its management.

As I understand it, what that was was a contribution by a foundation to the Spectator to conduct investigative journalism. I was on the board of the American Spectator later on when the allegations about the project were simply that it did exist. The publisher at that time, under the supervision of the board of directors, hired a major independent accounting firm to conduct an audit to report to the publisher, and therefore to the board of directors, with respect to how that money was funded. I was on the board at that time.

As a result of that investigation, the magazine, while it felt it had the right to conduct those kind of investigations, decided that it was not in the best interest of the magazine to do so. It ended the project. It established rules to restrict that kind of activity in the future and put it—

Senator LEAHY. Did a great deal of that money come from Richard Mellon Scaife?

Mr. OLSON. Yes.

Senator LEAHY. Two million dollars?

Mr. OLSON. I don't know the exact amount.

Senator LEAHY. Would \$2 million—

Mr. OLSON. It wouldn't surprise me. That is in the ball park, and there was an audit that was made public, as I understand it, and I don't know the exact number.

Senator LEAHY. Did you have any contact with Kenneth Starr or part of his prosecution team in regard to the Arkansas Project?

Mr. OLSON. No, none whatsoever with respect to the Arkansas Project. Now, Mr. Hale was a witness for Mr. Starr.

Senator LEAHY. I understand.

Mr. OLSON. I didn't talk to him at all about it, but I talked to his prosecutors down in Arkansas when it was a possibility that he would testify in Washington. They were concerned about that as well and I did speak to them.

Senator LEAHY. "Nasty," "Brutish" and "Short" were pseudonyms used in the American Spectator Foundation. Did you publish articles under one of those pseudonyms, "Nasty," "Brutish," or "Short?"

Mr. OLSON. Yes, but the full name is "Solitary, Poor, Nasty, Brutish and Short," which is Thomas Hobbs' characterization of the life of man.

Senator LEAHY. Did you identify with one of those?

Mr. OLSON. No. That was the—

Senator LEAHY. Not "short."

Mr. OLSON. That was the solitary—I don't know. There were two or three articles published under that pseudonym which is listed in the masthead of the magazine as a fictional law firm and—

Senator LEAHY. But you helped write some of them?

Mr. OLSON. I helped write—I think there were two or three, and we supplied copies of those to the committee.

Senator LEAHY. If you were Solicitor General of the United States, would it be safe to say that you would not be writing articles with at least the tone of these articles that some would call nasty and uncivil?

Mr. OLSON. I would not be writing articles under pseudonyms and I would not be writing articles that were of that nature.

Chairman HATCH. We could use some tougher briefs in the Supreme Court, however, so don't be afraid.

Senator LEAHY. I have a feeling even this Supreme Court might not like those—well, I don't know.

Chairman HATCH. I think they might.

Senator LEAHY. Maybe this Supreme Court, but most would not.

There were no meetings of the Arkansas project in your office or anything?

Mr. OLSON. No, there were none.

Senator LEAHY. Privacy, consumer privacy. Consumer information is collected on Web sites and how it is used and resold is becoming more and more of a concern to everybody. It is a concern to me.

Some of this is good if you are guy like me or say you are a fly fisherman or something like that and you want to get the latest information on fly fishing and you send the information about yourself thinking you are going to get everything there might be, and that might be wonderful. On the other hand, there are a whole lot of other things there that you don't want.

If you look at the Fourth Amendment, there is an awful lot the Government can find out about you and can know about you. I worry when I read things about Carnivore and the ability to track your cell phone locations and information on computer networks where the Government would do it. I don't care who is in power in Washington or who is in the Congress. The thought I find rather frightening. I would hope that we could do a better job here.

I worked in 1994 very hard with then Congressman Don Edwards on the CALEA legislation, the Communications Assistance for Law Enforcement Act, which you know. I thought we drafted a very balanced law. We allowed wiretaps in the days when the sheriffs were able to hook the alligator clips to the wire. Basically, this is the same; you have still got to the courts and everything else. In the digital age, you need different equipment.

But I think the FBI and the DOJ overreached in their interpretation of that statute and went way beyond what I intended and what I think a number of my more conservative colleagues intended in co-sponsoring it. You had a role in the court challenge involving CALEA and the FCC.

This will be my last question, Mr. Chairman.

Do you feel that the Government went beyond what they should have in the use of CALEA?

Mr. OLSON. I felt that the regulations that we were challenging then—I represented the cellular telephone communication industry and the Citizens for Democracy and Technology, which is a group that is very interested in privacy in communications. In the United States Court of Appeals, we argued that the regulations that the FCC had adopted had gone beyond that statute. The United States Court of Appeals for the District of Columbia Circuit agreed.

I must say that I studied that statute intensely in connection with that representation. I agree with you that it was a very, very careful, delicate balance. I thought the legislative history was very interesting and very helpful. There had been a good balance done there between privacy concerns and legitimate law enforcement interests.

And we argued to the court that after the law was passed, and despite some very strong testimony by FBI Director Freeh with respect to reassuring you and other Members of Congress as to how far that legislation was going, that then the Government went a little bit too far, and the court agreed. I share your concerns about that field because that is—and that is a concern of a lot of Americans because our privacy is important to us in this world.

Senator LEAHY. I intend to follow up also with General Ashcroft on this. I worry about it. Senator Hatch has had to hear this story before, but coming from Vermont where you value your privacy, in all the years I have been in public office I think I have saved maybe two or three items ever written about me and actually framed up. One was a side bar to a profile in the New York Times.

And to put this in perspective, I live on a dirt road in Vermont, several hundred acres of an old tree farm where the adjoining farm through successive generations of families have watched over the place. They have cleared the roads and fields, and also they have known me since I was in high school.

The whole article goes something like this. The New York Times reporter pulls up, an out-of-state plate on his car. The old farmer is sitting on the porch. He says, "Does Senator Leahy live up this road?" The farmers says, "Are you a relative of his?" He says, "No, I am not." He says, "Are you a friend of his?" "Well, not really." "Is he expecting you?" "No, he is not." "Never heard of him."

We like our privacy, and in a digital age I think all Americans should. Law enforcement has legitimate things under legitimate court orders, following probable cause and all the checks and balances. But I think we have to be careful.

Mr. Olson, you have to be careful, Mr. Thompson does, and everybody else, and the Congress does, that a digital age does not mean an age of no privacy.

Thank you. Thank you, Mr. Chairman, and I thank you for your consideration here. We did this actually in less than two-and-a-half hours a nominee, for very, very important things. But I also appreciate your courtesy in making sure all of us were heard. We will submit our further questions quickly.

Chairman HATCH. Well, thank you, and I want to express my appreciation to the minority for their willingness to have this hearing today. This did appear as though it would be a very complex, difficult day for us, and it has turned out to be tough, but not any

worse than other tough days in the Senate. Fortunately, because they have stacked the votes probably until about 6:30.

Mr. OLSON. I just want to thank you both and other members of the Committee on behalf of myself and Mr. Thompson and the Department. I think these have been very good questions, and I think I speak for both of us that we very much appreciate the opportunity not just today, but the other visits that we have had with the members of the committee.

Chairman HATCH. Well, thank you.

Let me just say in closing that this has been a good hearing. I hope all of them won't be this extensive, but it has been a good hearing. I think both of you have acquitted yourselves very, very well. You are both tremendous people. I have known Larry Thompson for about 10 years and I have known you for about 25. Frankly, I don't know of two better people for these jobs than the two of you.

I have a feeling that you will do a great job for everybody, not just for people of a certain ideology or feeling. You, being the great lawyer you are, have represented people across the spectrum. And as you know, as Solicitor General, you are going to have to do the same at the Justice Department.

I want to thank my colleague, Senator Leahy. This hasn't been easy for him, it hasn't been easy for me.

Here is what we intend to do. We will meet on the Tuesday when we get back and see if we can iron out some of these ragged edges of the blue slip policy, which I think we can. I hope we can. In the interim, we will have any written questions that members of this Committee want to submit. We hope they will be in by Wednesday at noon; that will be the due date, next Wednesday. And we hope you will answer them immediately and get them back so that everybody will have a decent chance of reviewing them.

And then that being the case, we will schedule within the next day or so the mark-up on you and Mr. Thompson for the Thursday when we get back. So we will have the meeting on Tuesday. We may have a hearing on Wednesday on another unrelated item and then we will have the mark-up on Thursday. Hopefully, we can get you down there so that the Justice Department will have at least three of the top leaders there, and we can get moving here because we are now Justice Department-leaderless for 3 months and we have just got to change that.

So we will do our very best to move this ahead. I just want to thank both of you for being here, for the excellent way you have acquitted yourselves, for the, I think, excellent answers that you have given to all of us and for the friendship that you have shown to the Committee through the years.

So with that, we will adjourn until further notice.

[Whereupon, at 4:32 p.m., the Committee was adjourned.]

[Questions and answers follow:]

QUESTIONS AND ANSWERS

Written questions for Theodore B. Olson submitted by Senator Durbin

Question 1: In the aftermath of the recent Presidential election, the Justice Department is conducting a preliminary probe of allegations of minority disenfranchisement in Florida. The Department of Justice will determine whether a Federal investigation is warranted. In addition, the U.S. Civil Rights Commission recently

released preliminary findings about irregularities in Florida. These findings include: Haitian, Puerto Rico and other Hispanic voters were not provided with language assistance; old and defective election equipment was found in poor precincts; many blacks did not vote because their polling places could not confirm their eligibility; and some polling places closed early or were moved without notice.

1. What are your views on these types of investigations and the preliminary findings?
2. Will you prosecute violations of the Voting Rights Act to the fullest extent of the law?
3. To what extent and under what circumstances would recuse yourself from involvement in these cases given your involvement in *Bush v. Gore*?

Question 2: When I asked about your high profile law practice and your history of participation in extremely political activities and cases you stated “I do not know that I call many of those cases political cases. They are cases that involve important policies of our country.”

1. Please explain the difference between political cases and cases involving important policies of our country.
2. Please explain what criteria you use to determine whether a case is political.
3. Please explain whether the following cases are political *United States v. Virginia*, *Bush v. Gore*, and *Rice v. Cayetano*.
4. Please explain how your writings for *The American Spectator*, including “The Most Political Justice Department Ever” and “Criminal Laws Implicated by the Clinton Scandals: A Partial List”, are not political, especially given the fact that the writings were clearly one sided.
5. In *The American Spectator*, you “catalogued” alleged criminal misconduct by identified members of the Clinton Administration. Specifically, you named Bill Clinton, Hillary Rodham Clinton, Bernard Nussbaum, Webster Hubbell, and Betsey Wright. What assurances can you give that you will recuse yourself from any involvement or participation, directly or indirectly, in any investigations or other legal actions concerning these individuals and/or other members of the Clinton Administration?

Question 4: Previously you had stated that the role of Solicitor General is the government’s lawyer “so even if we disagree with the policies of the law and even if we feel that it is of questionable constitutionality, we must enforce it and we must defend it.” At the hearing you stated you still hold that view and that “we must be vigorous advocates for the Congress when we go before the courts.” Given that you also stated that the Solicitor General should take into consideration the President’s policies, what is the proper role for the Solicitor General when the President’s position differs from the law being reviewed by the court?

Question 5: Under what circumstances would it be appropriate for the Solicitor General to change the position taken by the previous Administration on a case pending before a federal court or the Supreme Court?

Question 6: You have written about the necessity for the Department of Justice to maintain a non-partisan stature. In fact, recently you have stated, “The department and its officials traditionally have been held to a standard of independence and non-partisanship not expected at other federal agencies.” (Theodore B. Olson, “The Most Political Justice Department Ever: A Survey”, *The American Spectator*, September 2000)

Given the Solicitor General’s unique role, often referred to as the “tenth Justice of the Supreme Court”, and the standard you uphold for the department, it would be even more important to maintain a non-partisan and even-handed approach.

Yet in your career you have taken an acerbic tone in your writings and clearly promoted and advocated extreme partisan positions. Given your extensive track record of being a highly partisan figure, how can you guarantee this Committee and Congress that you will uphold the independence and non-partisanship the position demands?

Question 7: The Partial Birth Abortion Ban Act of 2000 would have banned so-called “partial-birth abortion” without any exception for the health of the woman. The Supreme Court in *Stenberg v. Carhart* recently struck down a Nebraska law that also purported to ban so-called “partial-birth abortion” and did not provide an exception for the health of the mother. [Partial Birth Abortion Ban Act of 2000; *Stenberg v. Carhart*] The Justice Department declared that the legislation “violates constitutional standards recently reaffirmed by the Supreme Court.” [Nov. 7, 1995 Office of Legislative Affairs memorandum]

1. When I asked you about this case, you indicated in your testimony that the Court’s decision in *Stenberg* was fractured on the question of whether a health

exception was mandatory and it turned on the scope of Nebraska's health exception. Upon review of *Stenberg v. Carhart*, could you respond again to the question of what advice you will render regarding legislation purporting to ban so-called "partial-birth abortion" without an exception for the health of the woman?

2. Do you believe that any ban on an abortion procedure without a health exception can pass constitutional review under *Stenberg*?

Written questions for Larry D. Thompson submitted by Senator Durbin

Question 1: President Bush and Attorney General Ashcroft have given priority to the issue of racial profiling. I commend them for giving this issue high priority and look forward to working with them on my ongoing efforts to address this issue in the U.S. Customs Service.

The insidious practice of racial profiling undermines public confidence in law enforcement and damages the credibility of police forces around the country, even though the vast majority of police are carrying out their duties responsibly and professionally. Most importantly, racial profiling creates an atmosphere of distrust and alienation that isolates broad segments of the American population.

As you know, this issue affects federal, as well as state and local law enforcement activities. In fact, a GAO study of profiling practices of airline passengers concluded that the U.S. Customs Service was intrusively searching African-American women and other minorities for contraband at much higher rates than they searched other segments of the population. Ironically, the women being targeted were statistically less likely than other passengers to be found carrying contraband.

Specifically, GAO found that African-American women were nearly three times as likely as African-American men to be strip-searched, even though they were only half as likely to be found carrying contraband. Furthermore, African-American men and women were nearly nine times as likely, and Hispanic-American men and women were nearly four times as likely, as White-American men and women to be x-rayed, even though they were not more likely to be carrying contraband.

I have introduced legislation to specifically address the concerns raised in the GAO study and help the Customs Service make more effective use of its resources, and avoid unwarranted searches.

1. Do you agree that the racial profiling practices of the Customs Service should be eliminated?

2. Will you support my legislation and urge a favorable statement of the Administration's position on this proposal?

Question 2: Do you believe that invidious discrimination, in the form of racial profiling, occurring at any and all stages of the criminal justice process (i.e., stops, investigations, arrests, charging offenses, prosecutions, and sentencings including penalties and incarceration terms) should be given zero tolerance? What suggestions/solutions would you recommend to eradicate this pervasive problem?

Question 3: I am concerned that African Americans represent 12% of the U.S. population (some sources reflect 13%) and 13% of its drug users. Yet African Americans comprise 35% of all those arrested for drug possession and 55% of those convicted of drug possession. Five times as many whites use drugs as African Americans, but African Americans comprise the greatest majority of drug offenders sent to prison. Race appears to be a clear factor. How should we go about addressing the racial disparities in our prison system?

Question 4: President Clinton's drug czar Barry McCaffrey pushed for a 32% increase in Federal drug treatment funding-to \$3.8 billion a year. Would you support increased drug treatment funding?

Question 5: What are your views regarding repealing mandatory minimum sentences for drug offenders?

Question 6: In the aftermath of the recent Presidential election, the Justice Department is conducting a probe of allegations of minority disenfranchisement in Florida. The Department of Justice will determine whether a Federal investigation is warranted. In addition, the US Civil Rights Commission recently released preliminary findings about irregularities in Florida. These findings include: Haitian, Puerto Rico and other Hispanic voters were not provided with language assistance; old and defective election equipment was found in poor precincts; many blacks did not vote because their polling places could not confirm their eligibility; and some polling places closed early or were moved without notice.

1. What are your views on these types of investigations and the preliminary findings?
2. Will you prosecute violations of the Voting Rights Act to the fullest extent of the law?

Responses of Theodore B. Olson to questions submitted from Senator Leahy

Question 1: At your confirmation hearing I asked you whether you “were involved in the so called Arkansas Project at any time” and you answered that as a member of the board of directors of the American Spectator, you became aware of it and that you were “not involved in the project in its origin or its management.” I asked whether there had been any meetings of the Arkansas Project in your office and you replied that there had not been.

(a) In *The Hunting of the President*, Joe Conason and Gene Lyons write that you attended a meeting in the Washington law offices of Gibson, Dunn & Crutcher in late 1993 or early 1994 attended by Steven Boynton, David Henderson, John Mintz, Ronald Burr and Michael Horowitz at which the topic was using Scaife funds and the American Spectator to “mount a series of probes into the Clintons and their alleged crimes in Arkansas.” Did you attend such a meeting? Please produce all notes, time records and other documents relating to such a meeting.

Answer: I do not recall the meeting described. I certainly was not involved in any such meeting at which a topic was using Scaife funds and the American Spectator to “mount a series of probes into the Clintons and their alleged crimes in Arkansas.” And I have no notes, time records and other documents relative to any such meeting. As reflected in my answer to question no. 4, I was retained in early 1994 by the American Spectator to perform certain legal services, including legal research regarding various matters. But that relationship was not for the purpose of conducting or assisting in the conduct of investigations of the Clintons. I learned some years later, of course, that the American Spectator magazine was investigating the conduct of the Clintons in Arkansas, as were quite a number of other magazines, newspapers and broadcast journalists, but I was not a party to these investigations.

(b) In *The Hunting of the President*, Joe Conason and Gene Lyons write that in early October 1997 you attended a special meeting of the American Spectator Education Foundation board at the home of R. Emmett Tyrrell in which you were named the Secretary-Treasurer of the organization. Did you attend a meeting of the board in early October 1997 at the home of Mr. Tyrrell? Were you named an officer of the organization? If yes, why did you not indicate on the Judiciary Committee questionnaire that you had served as an officer of that organization?

Answer: As a member of the American Spectator Board, I attended a Board of Directors meeting at the home of Board Chairman R. Emmett Tyrrell. That meeting was, as I recall, in October, or perhaps November of 1997. I believe that I was asked to draft minutes of the meeting for the Board, but I do not recall being named as Secretary-Treasurer, and do not recall ever serving the Board in that capacity. I have a vague recollection that I served as a temporary secretary for the purpose of that meeting, and perhaps a subsequent one, something that I did not recall at the time I answered the initial written questions. I never served as Treasurer and do not recall doing anything else in the nature of the duties of a corporate secretary.

(c) In *The Hunting of the President*, Joe Conason and Gene Lyons write that you met with other members of the board of the American Spectator Educational Foundation at the offices of Gibson, Dunn & Crutcher in July 1997 to discuss allegations that money for the Arkansas Project had been misallocated. Did you attend such a meeting?

Answer: I do recall meetings, which I now realize must have been in the summer of 1997 in my office regarding allegations regarding what became known as the “Arkansas Project,” and questions concerning whether expenditures involved in that project had been properly documented. The only concern regarding “misallocation,” that I recall, was whether the money spent had been accompanied by the proper documentation and whether the funds had been drawn from the correct internal corporate account. These concerns led to the internal independent audit to which I have previously referred which was conducted under the supervision of the publisher and with the assistance of an independent auditing firm.

Question 2: In response to question 32(e) of my first set of written questions, you say that you, “became aware of allegations regarding what came to be labeled the

'Arkansas Project' during my tenure on the Foundation's Board of Directors, in 1998, I believe." Without reference to when you became aware of any *allegations* surrounding the project, please tell me when you became aware of the existence of the project and/or the existence of "investigative" journalism being conducted by the Spectator, or anyone affiliated with it, in Arkansas with a focus on the past activities of Bill Clinton, and how you became aware.

Answer: I was certainly aware that the magazine was publishing articles regarding the Clintons' conduct in Arkansas, as were other publishers and other journalists. For example, I recall that David Brock's first article about President Clinton's activities as Governor appeared around January, 1994. Those articles were obviously the product of what has come to be known as investigative journalism. I was not involved in organizing, supervising or managing the conduct of those efforts. I was not aware of the "Arkansas Project" until, as I have indicated, in 1997. I now realize that the allegations concerning the Arkansas Project came to my knowledge in 1997, not 1998, as reflected in my responses to the foregoing question.

Question 3: You testified at your hearing that you were not involved in the origins or management of the Arkansas Project. Were you involved in advising anyone who was involved in the origins or management of the project? If so, what advice did you provide? Were you at meetings or social events with anyone involved in the project as an originator, manager, reporter, or source for the project? If so, what role did you play at these meetings or social events?

Answer: I did not realize that a Project of any sort was underway except to the extent that I have indicated. I was in contact at social events with reporters for the magazine and members of the editorial staff, individuals whom I regard as personal friends. I have been at countless social events at which one or more of such persons may have been present. I have not kept records of such meetings, or the nature of conversations that may have occurred at such meeting that might have involved President Clinton or his contemporaneous or past conduct. I was not playing any particular role at those social events, except that I was probably a host of events at which persons who wrote for or performed editorial services for the American Spectator may have been present. To the extent that it is relevant to your inquiry, I was the best man at the wedding of the editor-in-chief of the American Spectator. I recall that he was also present at my wedding. He is a personal friend and we have had numerous social meetings. He has written at least two books about former President Clinton. I do not interpret your inquiry as asking for the substance of conversations at social events. And I do not recall giving any advice concerning the conduct of the

Question 4: Were you retained as an attorney by the American Spectator Educational Foundation? If so, what was the scope of that representation and for what period of time did you represent it? Please produce all billing records in connection with this representation.

Answer: I represented the American Spectator in the performance of legal services from time to time beginning in 1994. The nature and scope of those services and billing records with respect thereto are subject to the attorney client privilege. As set forth above in my response to question No. 1, those legal services were not for the purpose of conducting or assisting in the conduct of investigations of the Clintons.

Question 5: In response to question 1.(b) of my first set of written questions, you describe your role with the Independent Women's Forum as advisory, and say that you had no formal position within the organization. However, you describe no specific activities in which you were engaged in connection to the IWF. Please describe in detail what IWF meeting or events you attended, and specifically what work you did for the IWF, including any amicus briefs which you wrote, signed or about which you were consulted by the IWF.

Answer: I recall attending one advisory board meeting at which the activities of this organization were discussed. I recall two or three dinners hosted by officers of the organization. I recall filing one amicus brief in the VMI case before being retained to represent a party at a later stage of the litigation, one in the Taxman litigation and one in California's Prop. 209 case. In that regard, I was acting as counsel to the organization and not as an officer.

Question 6: In response to question L(d) of my first set of written questions, you describe your role with the Washington Legal Foundation as advisory, and say that you had no formal position within the organization. However, you describe no specific activities in which you were engaged in connection with the WLF. Please describe in detail what WLF meeting or events you attended, specifically which activities and programs you provided comments about and describe in detail what comments you provided.

Answer: I recall attending several advisory board meetings at which the activities of the W FL were discussed, various social events over the years, and several programs in which I participated as a panelist discussing developments in the United States Supreme Court at which journalists and other members of the public were invited.

Question 7: In response to question 6 of my first set of written questions, you say you cannot recall the specifics of the members of Congress and their staffs you advise. Please search your records for any specifics of which members of Congress and which staff members you advised.

Answer: I recall a luncheon program hosted last year by Senator Sessions at which a panel, including me, Walter Dellinger, Alabama Attorney General Bill Pryor and others discussed the Supreme Court's federalism jurisprudence. I recall being contacted by Members and staff of one of the Committees of the House to talk about legal issues arising out of the conduct of the census and the Supreme Court decision involving the manner in which it was to be conducted. On occasion, I receive calls from individual Members and staff of both Houses of Congress regarding legal issues on which I may be perceived to have some expertise. Some time ago, for example, I was asked by Representative Dickey to look over and comment on proposed legislation involving changes to the Independent Counsel laws. Members of the Congress have asked me from time to time to comment on current legal issues. I do not keep notes on such inquiries, and have no records that would itemize such contacts.

My law firm represented former Senator Robb in connection with his investigation by the Department of Justice, and I assisted in that engagement. My firm was also involved in defending then-Representative Torricelli in his investigation by the House Ethics Committee and I assisted in that engagement. And my firm handled a pro bono legal case for Representative Bliley in which I assisted. The firm also represented former Representative Jay Kim in connection with a Justice Department matter involving Representative Kim, and I assisted in that engagement.

